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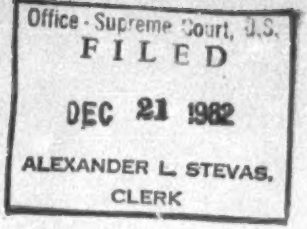

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1982

JOHNNY J. DOTSON

&

DANIEL FINN BLOCH

PETITIONERS

v.

MOUNTAIN MISSION SCHOOL, INC., et al.,

RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE FOURTH CIRCUIT, UNITED STATES COURT OF APPEALS

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QUESTIONS PRESENTED FOR REVIEW

1. Does 42 U.S.C. § 1985 permit federal courts to exercise personal jurisdiction in a forum state over non-consenting, non-resident defendants who allegedly participated in a multi-state civil conspiracy?

2. May a state constitutionally discriminate against a class of non-voting, orphaned infants by providing that the institution and individuals charged with their care, and *that institution alone*, shall be exempt from state inspection, licensing and other regulations designed to protect, benefit and harbour other state orphans?

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OFFICIAL COURT OPINIONS

The United States Court of Appeals for the Fourth Circuit heard petitioners' appeal from the United States District Court for the Western District of Virginia and entered judgment on October 18, 1982, rehearing denied on November 12, 1982. (See Appendix, page 11.)

OFFICIAL COURT OPINIONS

The United States District Court for the Western District of Virginia heard petitioner's case and entered judgment on September 19, 1979, with a second Order vacating part of its original Order dated November 2, 1979.

(See Appendix, page 28.)
(Also, page 35.)

CONSTITUTIONAL PROVISIONS

The Fourteenth Amendment to the Constitution provides:

"1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner Johnny J. Dotson was a resident of the Mountain Mission School from age one to sixteen. He alleges severe child abuse and sexual molestation by the orphanage staff. He alleges Virginia Department of Public Welfare and Institutions personnel, who are charged with licensing, inspecting and regulating child-care institutions in Virginia, were not permitted to set foot on the premises of the Mountain Mission School during all the time he was a resident.

Petitioner alleges that he was rigidly sequestered from any official to whom he could and would have complained by the orphanage staff, and that had the Virginia Department of Welfare and Institutions personnel been able to make personal inspections and talk to the children, he could and would have reported the violations of law.

Because of the statute whose constitutionality is being challenged, petitioner alleges he was unable to complain at an early age, and that his orphanotrophi guardians, the only persons who could and normally would be expected to report violations of law on his behalf, were the very persons violating the law, and therefore did not report the illegalities.

Petitioners allege the Virginia Department of Welfare and Institutions is responsible for inspecting all other child-care institutions in the State of Virginia, and does so, and that it should have been allowed to inspect the institution where he was raised and interview the children; and that had it been allowed to do so, it could and would have prevented later illegal acts by the orphanotrophi.

Petitioners allege the statute in question is unconstitutional because they were injured as the result of being deprived, along with the other orphans who were also injured and deprived, of the equal protection of the laws.

Petitioners also sought to include as defendants in the action several non-residents under the theory 42 U.S.C. § 1985 should permit a district court to exercise personal jurisdiction over such defendants.

WHERE FEDERAL QUESTIONS WERE RAISED

The United States Court of Appeals, Fourth Circuit, raised federal questions when it quoted the Supreme Court decisions and authorities on constitutional law in its opinion, supra.

BASIS FOR FEDERAL JURISDICTION

This petition to the Supreme Court of the United States is sought pursuant to 28 U.S.C. § 1254, which gives the Supreme Court jurisdiction to review the final judgment of a United States Court of Appeals.

In this case the United States Court of Appeals, Fourth Circuit, heard petitioners' appeal from the United States District Court for the Western District of Virginia.

The Court of Appeals entered its judgment on October 18. 1982, rehearing denied on November 12, 1982.

ARGUMENT

Petitioners believe this court should accept jurisdiction of this action and issue the writ because:

1. Granting that petitioner's allegations of child abuse could be true, the possibilities of such conditions clearly establish the need for inspection of orphanages. This is why Virginia regulates child-care institutions generally.

2. Normally parents are available to report illegal acts against their children, but orphans have no parents. Their surrogate parents, the orphanotrophi, would be expected to fill the same role, but when they are violating the laws themselves, this is virtually out of the question.

3. To assume that orphanotrophi never violate the law is of course specious.

4. On the occasions when violations do occur, who remains to hear the small children's complaints? The State Department of Welfare and Institutions is assigned this task in Virginia, as is done in nearly every state, but is specifically excluded from doing so within a small geographical boundary. It essentially describes and was meant to affect only the Mountain Mission School – even though the school is not mentioned by name in the statute.

5. Therefore there is a legal vacuum. No one is available by law under the present situation to inspect the institution regularly, talk to the children routinely, and ascertain if they are being treated properly. This is especially true when the children are, as alleged here, isolated from nearly everyone by the orphanotrophi.

6. Where is the legitimate state interest in excluding (abandoning) this *single group* of orphans from the statutory and regulatory safeguards given other orphans by the Virginia Department of Welfare and Institutions?

7. The reasoning that heightened scrutiny would not be appropriate is arguably in error, as is the assertion that the statute draws a distinction between two different groups of orphans that does not deprive equal protection of the laws – whereby one group is regularly inspected and the other never.

8. Petitioners believe it is inappropriate for the Court of Appeals to compare grandfather clauses regarding pushcarts to the need for laws to protect children in orphanages. If there were no need, the State presumably would not have enacted laws to protect children in any institution. Nor is the question of children in an orphanage to be compared to a "customer" of an unregulated commercial entity seeking an extension of the regulation. Establishing or invalidating commercial regulations may or may not be desirable, but stripping protection from innocent children is an altogether different, and very serious, matter.

Petitioners believe the Court of Appeals should be reversed and Virginia statute 63.1–218 should be declared unconstitutional.

9. Petitioners also alleged that 42 U.S.C. § 1985 should provide an exception wherein a federal court may exericse personal jurisdiction over non-consenting defendant-co-conspirators not served in the forum state when they have conspired with those served in the forum state. Otherwise foreign conspirators would not be held accountable for their acts, or multiple suits would have to be filed in several states for the same civil conspiracy –neither of which are arguably reasonable interpretations of why § 1985 was enacted.

10. Petitioners believe the Court of Appeals erred in finding that § 1985 does not permit federal courts to exercise personal jurisdiction over nonconsenting, out-of-state defendants. The logic may be found in the following scenario:

Suppose one person in Virginia conspired with one person in Ohio. If the conservative view that the statute's beginning ["If two or more persons in any State or Territory..."] means two or more persons in *one* state, then in the scenario the conspirators could not be prosecuted because the two-person requirement within the one state would not be met – in either state.

11. It is well settled that § 1985 is not interpreted to mean *exactly* what it appears to mean, i.e., that it is a general federal tort law permitting persons to sue when victimized by conspiracies. The Supreme Court has interpreted it to mean it may be used only when racial or perhaps class-based, invidiously discriminatory animus is present – even though the statute does not specify that.

12. Petitioners allege the above logic makes it clear that the framers of § 1985 really meant to include all the United States and its possessions. To hold otherwise would mean that the District of Columbia, which is neither a state nor a territory, would not be covered by § 1985 because the statute does not mention it by name. In that case § 1985 would not cover conspiracies in Washington, D.C. at all.

13. Petitioners conclude that § 1985 permits federal courts to exercise personal jurisdiction over nonconsenting defendant-conspirators outside the forum state as well as within, i.e., anywhere in the United States and its possessions.

WHEREFORE, petitioners request that this court issue the writ and assume jurisdiction of the cause of action.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit was mailed to all counsel of record on January 5, 1983.

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UNITED STATES COURT OF APPEALS

FOR THE FOURTH DISTRICT

No. 79 – 1771

Johnny J. Dotson and

Daniel F. Bloch

Appellants

v.

The Mountain Mission School, Inc., et al.,

Appellees

Appeal from the United States District Court for the

Western District of Virginia, at Big Stone Gap

Glen M. Williams, District Judge

Submitted December 10, 1981 Decided October 18, 1982

Before WINTER, Chief Judge, BUTZNER and RUSSELL

Circuit Judges

PER CURIAM:

Daniel F. Bloch, pro se plaintiff, is an individual who has become interested in the activities of The Mountain Mission School, an orphanage located in Western Virginia. He has never been a resident or employee of the orphanage. He believes that children at the orphanage are illegally abused, and that public officials and private individuals have committed illegal acts, some of them harming Bloch, in an effort to cover up the abuses.

Bloch filed the present case in the district court asserting these claims and seeking assorted forms of declaratory, injunctive and monetary relief. The alleged causes of action were primarily grounded on 42 U.S.C. § 1985. Named as defendants were the orphanage and forty-two individuals, including officials of the United States, Virginia, Ohio and Florida. Named as plaintiffs were Bloch and Johnny J. Dotson, a minor who was then residing with Bloch in Florida, but who had previously resided in the orphanage. Bloch was the only person to sign any of the plaintiffs' pleadings in the district court, but he asserted that he was Dotson's legal guardian and that he was signing on Dotson's behalf as well as for himself.

The district court ultimately dismissed the complaint and related pleadings on a number of grounds, and plaintiffs appeal. While they assign twenty-four grounds of reversible error, we perceive seven separate issues which merit discussion. We will treat them seriatim, setting forth additional facts where required. We affirm judgment in part, and we reverse in part and remand for further proceedings.

I.

MANDAMUS

Bloch sought a writ of mandamus compelling federal officials to prosecute various defendants. The district court dismissed this portion of the case on the ground that mandamus

will not lie to compel the performance of an act unless it is ministerial in nature, which the initiation of prosecution is not. See Record on Appeal at Tab 36, pages 3—4. The dismissal was correct. In any event, in a subsequent pleading, the plaintiffs explicitly abandoned this portion of the case. See id. at Tab 38, page 9A.

II.

THE FREEDOM OF INFORMATION ACT

Bloch sought an injunction under the Freedom of Information Act compelling federal officials to turn over certain records to him. The district court dismissed this portion of the case on the ground that "such a suit would be against the United States and should be filed in the jurisdiction in which the plaintiffs reside [i.e., Florida] as set forth in 28 U.S.C. § 1402." Id. at Tab 36, page 4. This reasoning was erroneous. The Freedom of Information Act itself provides that suits to enforce it may be brought "in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated...." 5 U.S.C. § 552(a)(4)(B) (1976) (emphasis added). The pleadings do not indicate where the agency records at issue are kept. They may well be kept in the Western District of Virginia, where the suit was filed. In a subsequent pleading, however, the plaintiffs also explicitly abandoned this portion of the case, see Record on Appeal at Tab 38, page 9, so that any error on the part of the district court was immaterial.

III.

HABEAS CORPUS

On May 29, 1975, in a state court located in the Western District of Virginia, Bloch was convicted on two counts of abduction. Bloch was charged with taking two wards of the Mountain Mission School without obtaining the orphanage's permission. As part of the present suit, Bloch sought a writ of habeas corpus overturning this conviction. The district court dismissed this portion of the case for failure to exhaust state

remedies. Bloch subsequently abandoned this portion of the case, see Record on Appeal at Tab 38, page 11, so that we need not consider the propriety of the dismissal.

IV.

OHIO ORPHANS

The plaintiffs claim that Ohio welfare officials violated Ohio law by placing Ohio orphans in The Mountain Mission School, an unapproved institution. The district court rejected this claim on two grounds: (1) Ohio welfare officials have removed the Ohio orphans from The Mountain Mission School, thereby mooting the controversy; (2) More importantly, the plaintiffs never had standing to challenge the practice. We agree that plaintiffs lacked standing to raise this issue.

V.

UNCONSTITUTIONALITY

The plaintiffs maintain that Va. Code § 63.1–218 (1980) is unconstitutional under the Equal Protection Clause of the Fourteenth Amendment. The statutory provision reads as follows:

> None of the provisions of this chapter [regulating orphanages and other child-care institutions] shall apply to any private school or charitable institution incorporated under the laws of this State, which is located west of Sandy Ridge and on the watersheds of Big Sandy river, and to which no contributions are made by the State or any agency thereof.

The Mountain Mission School may well be the only child-care institution thereby exempted from regulation. The district court never mentioned this claim, although it dismissed the entire case.

As a preliminary matter, we think that the plaintiffs have failed to join a proper defendant for this portion of the case. A suit challenging the constitutionality of this statutory provision should be brought against the state, the state agency

that would regulate The Mountain Mission School but for the exemption, or the state official in charge of that agency. None of these are defendants in the present case.

In any event, we think that the statute is constitutional. We do not perceive that the distinction drawn by the Virginia legislature harms a discrete and insular minority or impinges on a fundamental interest. (Even if orphans are a discrete and insular minority, heightened scrutiny would not be appropriate because this statute draws a distinction between two different groups of orphans, rather than between orphans and non-orphans.) Therefore, the applicable test is the minimum rationality test. Only one time in the last half century has the Supreme Court struck down a statute under this test, see Morey v. Doud, 354 U.S. 457 (1957) (striking down a law that exempted the American Express Company by name from regulations imposed on sellers of money orders),[1] and recently that decision was explicitly overruled, see City of New Orleans v. Dukes, 427 U.S. 297, 306 (1976) (per curiam opinion representing the views of seven Justices) (upholding a grandfather clause that exempted two vendors from a ban on pushcarts in the French Quarter). In the majority of cases of this sort, the Court has not found it necessary to write an opinion, but instead has rejected the challenge summarily. See G. Gunther, Cases and Materials on Constitutional Law, 674 n.1 (9th ed. 1975). Moreover, we are unaware of any other case where a claim of this sort was brought by a "customer" of an unregulated entity, seeking an extension of the regulation. Rather, claims of this sort have been brought by regulated entities, and the remedy, if any, was thought to be invalidation of the regulation. We conclude that there is no merit to this portion of the plaintiff's case.

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1. The Burger Court ostensibly has applied this test on a number of occasions to strike down statutes, but these decisions

are generally interpreted as implicit extensions of heightened scrutiny to new subjects (e.g., gender-based discriminations). See, e.g., G. Gunther, Cases and Materials on Constitutional Law, 663 nn. 13, 15 (9th ed. 1975).

VI.
INJUNCTIVE AND COMPENSATORY RELIEF FOR OTHER INJURIES

Having decided the five more narrow portions of this case, we are left with an open-ended request for injunctive and compensatory relief for other injuries.

A. Jurisdiction

At the outset, it is appropriate to determine which of the many defendants are properly before us and which should be dismissed for lack of personal jurisdiction. The plaintiffs' abandonment of the mandamus and Freedom of Information Act portions of their case, earlier mentioned, took the form of an abandonment of all claims against defendants William Webster and Griffin Bell. That leaves forty-one defendants, including The Mountain Mission School. These forty-one defendants may be divided into five groups for the purpose of determining if personal jurisdiction exists:

1. The Virginia Defendants. - The Mountain Mission School, sixteen of its officers, directors and employees, and eight other individuals (Williams, McGlothlin, Persin, Shields, J. Marshall Coleman, Sergent, Osborn, and Gibson) fall into this group.
2. Makely. – This defendant is a United States Magistrate in Ohio. There is no indication in the record that he was ever served. He has filed no pleadings in the case.
3. Sawyer. - This defendant is a private attorney in Florida. He filed an answer and a motion to dismiss but failed to allege a lack of personal jurisdiction.

4. Other Ohio and Florida Defendants. - Twelve individuals (Wainwright, Griscom, Paul Coleman, Schwertfager, Donna Gallion, Mullett, Beck, Asa Mellor, Wanda Mellor, Gary Oyler, Ruth Oyler, and Ottmar Gallion) fall into this group. They filed answers that explicitly alleged a lack of personal jurisdiction.

5. Pennsylvania Defendants. - Two individuals (Charles Lambert and Lynda Lambert) fall into this group. They filed a pro se "motion to dismiss" which failed to allege a lack of personal jurisdiction.

Unless an exception is provided by federal law or the law of the forum state, a federal court may exercise personal jurisdiction over a nonconsenting defendant only if he is served within the boundaries of the forum state. See Fed. R. Civ. P. 4(f). Federal law does not create any exceptions that are even conceivably applicable to the nonresident defendants in this case. See generally 4 C. Wright & A. Miller, Federal Practice and Procedure §§ 1118, 1125, at 523 n. 3 (1969 & 1981 pocket part). Virginia state law creates only one exception that is even conceivably applicable to the nonresident defendants in this case: the subsection of the Virginia long-arm statute which covers a defendant "[c]ausing tortious injury in this State by an act or omission outside this State if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this State." Va. Code § 8.01-328.1(A)(4)(1981 Cumm. Supp.) (emphasis added). It does not appear that a Virginia court has ever construed the emphasized language, but we do not think that it extends to any of the nonresident defendants in this case. Cf. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980) (holding that it was unconstitutional for Oklahoma to apply a similar long-arm statute to an East Coast auto distributor and an

East coast auto retailer, even though an East Coast customer drove his auto to Oklahoma, was involved in an accident there, and allegedly was injured as a result of a defect in the auto).

Of course, a federal court may exercise jurisdiction over a nonresident defendant who consents thereto by failing to allege a lack of personal jurisdiction in his answer or in his first motion, whichever comes first. See Fed. R. Civ. P. 12(h)(1). It is clear that Sawyer and the Pennsylvania defendants consented in this manner to the exercise of personal jurisdiction over them. Makely's status is unclear. Some courts have held that a defendant who fails to respond to a complaint in a timely fashion does not thereby consent to the exercise of personal jurisdiction over him, see cases cited in 5 C. Wright & A. Miller, Federal Practice and Procedure § 1391, at 857 n.44 (1969), but the better view is that, if the defendant were served, his failure to respond in a timely fashion constitutes consent, see id. § 1391, at 857-58. Therefore, the question of whether the district court has personal jurisdiction over Makely depends on whether he was served, which is something that is not reflected in the present record.

We conclude that only the defendants in the fourth group should be dismissed for lack of personal jurisdiction at this time. On remand the district court should determine whether Makely was served.

B. The Merits.

The request for injunctive and compensatory relief is grounded upon 42 U.S.C. § 1985. Section 1985(1) prohibits conspiracies to prevent federal officials "by force, intimidation, or threat," from discharging their duties. The first half of § 1985(2) prohibits conspiracies to prevent persons from attending or testifying in federal court. The second half of § 1985(2) prohibits conspiracies to obstruct justice in state court "with intent to deny any citizen the equal protection of the laws." Finally, § 1985(3) prohibits conspiracies to deprive any person

"of the equal protection of the laws, or of equal privileges and immunities under the laws."

The factual allegations in the complaint do not implicate § 1981(1) and do implicate the second half of § 1985(2) and § 1985(3). As for the first half of § 1985(2), the complaint accuses defendant Persin of threatening Bloch in order to prevent him from testifying in a civil suit, but fails to indicate in what court that civil suit was to have been filed. See Record in Appeal at Tab 1, page 2. The complaint also accuses assorted individuals of agreeing to dismiss a federal suit brought by Ohio Welfare officials against The Mountain Mission School in order to prevent orphans, presumably including plaintiff Dotson, from giving damaging testimony. See id. at Tab 1, page 3.[2] Also, an inference can reasonably be drawn from the complaint as a whole that one purpose of the illegal conduct in which the defendants allegedly engaged was generally to prevent the filing of a federal suit or the testimony of the plaintiffs therein.

Given that pro se pleadings must be read liberally, we think that the plaintiffs must be afforded the opportunity to develop a claim under both halves of § 1985(2) and under § 1985(3) on remand in the district court if the other prerequisites for a suit under those provisions are present.

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2. Admittedly, this allegation is improbable, since some of the same individuals filed the suit in the first place.

The district court gave five reasons for dismissing some or all of this portion of the case as against some or all of the defendants.

(1) Class-based animus was a prerequisite and was not present;[3]

(2) The statute of limitations had expired for Bloch's claims;[4]

(3) Defendant Persin enjoyed judicial immunity;

(4) The defendant Florida parole officials did nothing wrong because they had a right to supervise the conduct of parolee Bloch;

(5) The complaint did not even allege that the directors of The Mountain Mission School or sixteen other individual defendants did anything wrong.

We turn to these reasons.

While courts have disagreed on whether class-based animus is an essential element for a violation of the first half of § 1985(2), see cases cited in Kimble v. D.J. McDuffy, Inc., 70 L.Ed.2d 651 (1981) (White, J., dissenting from a denial of certiorari), they agree that it is an essential element for

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3. Originally, the district court also held that state action was a prerequisite and was not present for many of the defendants. In a motion for reconsideration, the plaintiffs pointed out that state action is not a prerequisite for a suit under § 1985. The district court modified its order accordingly.

4. Originally, the district court also held that the statute of limitations had expired for Dotson's claims. In a motion for reconsideration, the plaintiffs pointed out that Dotson had been a minor until after the suit was filed, so that the limitations period had never started to run on his claims. The district court modified its order accordingly.

a violation of the second half of § 1985(2), see, e.g., McCord v. Bailey, 636 F. 2d 606 (D.C. Cir. 1980) (holding that it is not an essential element for a violation of the first half of § 1985(2) but that it is an essential element for a violation of the second half of § 1985(2)), cert denied, 451 U.S. 983 (1981); Brawer v. Horowitz, 535 F. 2d 830 (3 Cir. 1976) (same),

and the Supreme Court has held that it is an essential element for a violation of § 1985(3), see Griffin v. Breckenridge, 403 U.S. 88 (1971). We find persuasive those decisions holding that class-based animus is not a prerequisite for a violation of the first half of § 1985(2) but that it is a prerequisite for a violation of the second half of § 1985(2). The "equality" language that is the foundation for the class-based animus requirement in § 1985(3) is conspicuously absent from the first half of § 1985(2) but is present in the second half of § 1985(2).

The complaint clearly alleges that the conspiracy was motivated in part by animus against orphans, and we think that that is enough to invoke the portions of § 1985 that require class-based animus. In Griffen, the Supreme Court dealt with a conspiracy motivated by racial bias – the core concern of § 1985 – but stated in a footnote: "We need not decide, given the facts of this case, whether a conspiracy motivated by invidiously discriminatory intent other than racial bias would be actionable under the portion of § 1985(3) before us." 403 U.S. at 102 n.9. At that point, the Griffen court cited the remarks of Senator Edmunds, the Senate manager of the Ku Klux Klan Act of 1871, which enacted § 1985. Senator Edmunds opined that the statute would cover Democrats, Catholics or Methodists. See Cong. Globe, 42d Cong., 1st Sess. 567 (1871). We have recently relied in part on those remarks in holding that § 1985(3) covered a conspiracy motivated in part by animus against members of the Unification Church (i.e., "Moonies"). See Ward v. Connor, 657 F. 2d 45 (4 Cir. 1981), cert. den. sub nom. Mandelkorn v. Ward, 50 U.S.L.W. 3570 (Jan. 18, 1982).

Since Griffen, the Supreme Court has not faced the question of what classes are protected by the portions of § 1985 that require class-based animus, and the decisions of the lower courts are impossible to reconcile, see cases cited in

Scott v. Moore, 640 F. 2d 708, 718-24 (5 Cir. 1981). We think, however, that orphans are far more analogous to members of racial minorities than are members of a political party, whom Senator Edmunds would have included, or members of other groups that have been included by the courts, see, e.g., Scott v. Moore, supra (nonunion workers.)

It is not enough, however, to conclude that § 1985 was meant to cover the conspiracy alleged in this case. It must also be true that Congress had the power to prohibit such a conspiracy. See Griffen v. Breckenridge, supra; Ward v. Connor, supra; Bellamy v. Mason's Stores, Inc., 508 F. 2d 504 (4 Cir. 1974). In Griffen, the Supreme Court held that Congress had the power to reach a private conspiracy motivated by racial bias against blacks under the Thirteenth Amendment, which is phrased as a positive command rather than as a limitation on government and thus involves no state action requirement. The Court also stated that Congress had the power to reach the plaintiffs' right to travel, which is guaranteed - like the right to be free from slavery - by a positive (albeit implicit) command, rather than by a limitation of government. The Court explicitly declined to decide whether Congress had the power to reach private conspiracies under the Enforcement Clause of the Fourteenth Amendment, the other clauses of which limit only the states.

In Bellamy, we dealt with a private conspiracy motivated by animus toward the Ku Klux Klan (an ironic development given the origin of § 1985). Neither the Thirteenth Amendment nor the right to travel was implicated, and we avoided the question of congressional power by interpreting § 1985 not to reach private conspiracies unless they implicated one of the sources of power relied on by the Griffen court. Finally, in Ward, we held that Congress had the power to reach a private conspiracy to "deprogram" a "Moonie" because one object of the conspiracy had been to interfere with the plaintiff's right

to travel. There, we said: "[T]he complaint specifically alleges that interference with the plaintiff's right to travel was one of the objects of the conspiracy and the fact that the conspiracy had other objectives is immaterial." 657 F. 2d at 48. The complaint in the present case contains numerous allegations that interference with the plaintiffs' right to travel was one of the objects of the conspiracy, so Ward compels the conclusion that Congress had the power to reach the conspiracy alleged in this case.

Another possible problem arises at this point. Plaintiff Dotson is a member of the protected class, but plaintiff Bloch is not. By its terms, the portions of § 1985 that require class-based animus do not require that the plaintiff be a member of the protected class, but only that the plaintiff be harmed as a result of a conspiracy motivated in part by animus toward a protected group. We think that the statute should be accorded its literal meaning. The Supreme Court has expressly adopted this broad rule of standing under a related statute, see Sullivan v. Little Hunting Park, Inc., 396 U.S. 229 (1969) (applying 42 U.S.C. § 1982), and support for doing the same under the portions of § 1985 that require class-based animus can be found in Griffen itself, see Novotny v. Great American Federal Savings and Loan Assoc., 584 F. 2d 1235, 1245 (3 Cir. 1978), rev'd on other grounds, 442 U.S. 366 (1979) (expressing no disagreement with the lower court's holding that the plaintiff had standing despite the fact that he was not a member of the protected class.) In Griffen, the plaintiffs alleged that they were attacked because the conspirators mistakenly thought that one of the plaintiffs' traveling party – who did not join as a plaintiff – was a civil rights worker. The Griffen Court held that the plaintiffs had standing, even if the supposed civil rights worker had been the only target of the conspiracy, simply because they were injured as the result of the conspiracy. See 403 U.S. at 103. This holding is not directly

applicable in the present case, because the plaintiffs in Griffen were members of the protected class, but the holding does seem to indicate that Bloch has standing. We therefore conclude that he does.

The district court ruled that Bloch's claims were barred by the statute of limitations. In a conspiracy case, the limitations period begins to run when the last act is committed in furtherance of the conspiracy. The plaintiffs have at least alleged that such an act occurred within a few months of the filing of the suit. See Record on Appeal at Tab 1, page 4. Upon further development of the facts, it may turn out that a dismissal of Bloch's claims under the statute of limitations would be appropriate, but we think that a dismissal on this ground at this stage was erroneous.

The district court ruled that defendant Persin enjoyed absolute judicial immunity from this suit. If the allegations against Persin, a state judge, are taken to be true – if he informed counsel for residents of The Mountain Mission School who wished to filed suit that, if Bloch testified in that proceeding, he would imprison Bloch – we think that this defendant acted in clear absence of all jurisdiction, so that judicial immunity would not apply. See Stump v. Sparkman, 436 U.S. 349 (1978). We think the district court was in error in dismissing the claims against Persin on this ground.

Because the Florida welfare officials must be dismissed for lack of personal jurisdiction, we do not consider the correctness of the district court's ruling that the defendant Florida welfare officials did nothing wrong because they had a right to supervise the conduct of parolee Bloch.

Finally, it is true that the text of the complaint fails even to mention many of the named defendants. There are many serious allegations, however, in which the actor is not named. Since pro se complaints must be read liberally, we think that it was premature to dismiss defendants on this basis

at this stage of the proceedings. A number of the defendants objected to the vagueness of the complaint and demanded strict proof. Instead of outright dismissal, the plaintiffs should be required to clarify their allegations. When this has been done, a number of summary dismissals may well be appropriate.

VII.

BLOCH'S LEGAL CAPACITY TO SUE FOR DOTSON

In the district court, The Mountain Mission School, all sixteen of its officers, directors and employees, Williams and Osborne asserted that Dotson's claims against them were not properly before the court because Dotson had signed none of the plaintiffs' pleadings. Dotson's failure to sign any of the plaintiffs' pleadings would preclude litigation of his claims against these defendants unless Bloch, who did sign all the pleadings, was an attorney or otherwise had legal capacity to sue on Dotson's behalf. See Fed. R. Civ. P. 11, 17. Bloch is not an attorney. Bloch alleges that he was appointed Dotson's legal guardian by a Florida court, but does not allege that he was appointed Dotson's legal guardian by a Virginia court. We think we must look to Virginia law to determine whether Bloch has legal capacity to sue on Dotson's behalf in a district court located in Virginia. See 6 C. Wright & A. Miller, Federal Practice & Procedure § 1571, at 780-81 (1971).

In Holt v. Middlebrook, 214 F. 2d 187 (4 Cir. 1954) we applied Va. Code § 26-59, which provides that no person not a resident of Virginia shall be appointed or allowed to qualify or act as a personal representative, or be appointed as a guardian, unless a resident is appointed as a personal representative or guardian, as the case may be. We held that this statute prohibited a nonresident personal representative from maintaining an action against Virginia residents in a district court located in Virginia unless a resident had also been appointed as a personal representative. However, we later held in Vroon v. Templin, 278

F. 2d 345 (4 Cir. 1960), that this statute did not prohibit a nonresident guardian from maintaining an action against Virginia residents in a district court in Virginia. It was our view that the right of guardian to sue in a district court in Virginia was governed by the common law of Virginia. We left that question to the district court.

Unfortunately, there is no definitive Virginia decision indicating what the common law of Virginia is with respect to the right of a guardian not appointed by a Virginia court to sue on behalf of his alleged ward. In such circumstances we are obliged to make an informed prediction of how a Virginia court would decide the question if it were presented with it.

The majority rule at common law is that nonresident guardians may not bring suit out of the state of their appointment unless they obtain an ancillary appointment from the state in which they are suing. See 6 C. Wright & A. Miller, supra, § 1565, at 754 - 56. Many states with the majority common-law rule have relaxed it by legislation permitting foreign fiduciaries to sue locally. See id. Virginia has such a statute but it is very limited in scope. Va. Code § 26 - 60 permits a guardian who has been lawfully appointed in the state where a nonresident infant resides to sue in Virginia for authority to remove property or money in Virginia to which the infant is entitled to the jurisdiction of the infant's domicile. The statute, of course, does not apply here because the purpose of this suit is not to remove property or money to which Dotson is entitled from Virginia to another jurisdiction. But we think that the enactment of the statute was clear recognition on the part of the Virginia legislature that the majority common-law rule prevailed in Virginia and that it was necessary to modify it to some extent. Since the modification is inapplicable here, our conclusion is that the majority common-law rule prevails and Bloch is not permitted to sue on behalf of Dotson in Virginia because he was not appointed

as guardian of Dotson by a Virginia court of competent jurisdiction. The entire complaint on behalf of Dotson against the defendants who challenged Bloch's legal capacity to sue on Dotson's behalf was properly dismissed for the reasons we have expressed.

VIII.

We summarize our conclusions. We affirm the district court's dismissal of: (1) the prayer for writ of mandamus, (2) the request for relief under the Freedom of Information Act, (3) the application for a writ of habeas corpus, (4) the challenge to the decision by Ohio welfare officials to place Ohio orphans in The Mountain Mission School, (5) the challenge to the constitutionality of the Virginia statute exempting The Mountain Mission School from regulation, (6) all claims against defendants William Webster and Griffen Bell, (7) all claims against all Ohio and Florida defendants other than Makely and Sawyer, and (8) all of Dotson's claims against The Mountain Mission School, its sixteen defendant officers, directors and employees, Williams and Osborne. In all other respects, we vacate the district court's judgment and remand the case for further proceedings consistent with this opinion.[5]

AFFIRMED IN PART;
VACATED IN PART
AND REMANDED.

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5. In addition to a lack of personal jurisdiction and Dotson's failure to sign any of the pleadings, other defenses to this suit were raised below but not addressed by the district court. On remand, the remaining defendants are of course free to press any such defenses which they raised in a timely fashion.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION

JOHNNY J. DOTSON, et al.,

Plaintiffs

v. Civil Action No. 79–0125-B

THE MOUNTAIN MISSION SCHOOL, et al.,

Defendants

ORDER

In accordance with the Memorandum Opinion of this day, it is ORDERED that this suit be dismissed as to all defendants and stricken from the docket. Also, plaintiff is ORDERED to cease all discovery.

The Clerk of this court is directed to send certified copies of this Order to plaintiffs and to counsel for defendants.

ENTER: This 19 day of September 1979.

/s/ Glen M. Williams
U.S. District Judge

MEMORANDUM OPINION

This suit alleges jurisdiction of the court under 42 U.S.C. §§ 1985 and 1988; 28 U.S.C. §§ 1331, 1332, 1361, 1343, 1391, 1402, 1736, 2221, 2254, and 2401; and Rule 2 of the Federal Rules of Civil Procedure.

The suit seeks injunctive relief and damages in the amount of One Hundred Million Dollars ($100,000,000.00) from the various defendants for their depriving plaintiffs of rights guaranteed by the Fourteenth Amendment to the Constitution of the United States. Plaintiffs also seek injunctive relief against the deprivation of rights, privileges and immunities granted by the First and Sixth Amendments to the United States Constitution.

The defendant, Mountain Mission School, is a private orphanage and thereby is exempt from Virginia welfare laws. It is well settled that suits brought pursuant to 42 U.S.C. § 1985 relate to defendants acting under power derived by the authority of the state, or rather, "under color of state law." The plaintiffs allege that all the acts of the defendants in this case were under color of authority vested in them by the laws of Florida and Virginia. But the employees and officers of the Mountain Mission School were acting as employees of and associated with a private orphanage and in no manner acting under color of state law. In accordance with Henig v. Odorioso, 385 F. 2d 491 (3rd Cir. 1967), cert. den., 390 U.S. 1016 (1968) employees of private orphanages are not liable for their actions under 42 U.S.C. § 1985.

Furthermore, the plaintiffs allege that in 1974 the Mountain Mission School, or some of its agents, charged the plaintiff Bloch with abduction of the plaintiff Dotson that resulted in the plaintiff Bloch being convicted in the Circuit Court of Buchanan County, Virgina on a charge of abduction. The suit further contends that plaintiff Bloch's constitutional

rights were violated because his conviction was based on a plea of guilty which he now contends was coerced. Assuming that the Mountain Mission School could be sued under Section 1985, the matters which occurred regarding the plaintiff's conviction are now barred by the two-year Statute of Limitations. Brady v. Sowers, 453 F. Supp. 52 (W.D. Va. 1978). It is further to be noted that while the plaintiffs have sued all of the members of the Board of Directors of the Mountain Mission School, it is conceded in the suit that they had no personal knowledge of anything which occurred but merely alleges that they should have known. So, there is no conspiracy alleged as to the members of the Board of Directors of the Mountain Mission School, and, therefore, the action fails. See Wilkins v. Rogers, 581 F. 2d 399 (4th Cir. 1978).

For the foregoing reasons, the Mountain Mission School; Charles M. Sublett, President; James Marvin Swiney, Vice President; Mrs. James Marvin Swiney, Secretary; Mrs. Charles M. Sublett, Treasurer; Paul M. Platt; Mabel Abbott; Jim Stanley; Minnie Grannert; Dr. Thomas D. McDonald; Dr. J. P. Sutherland; Fred Short; Herman T. Wells; Reverend Clarence Greenleaf; Mrs. Sylvia Raines; Mrs. B. D. Phillips; and, Bud Degaffrillo, all of whom are sued as either directors or employees or officers of the Mountain Mission School, are hereby dismissed from the suit, and as to them, it is stricken from the docket.

Plaintiffs have also filed suit against Robert Beck, who is described as the prosecuting attorney of Holmes County, Ohio; Asa Mellor; Wanda Mellor; Gary Oyler; Ruth Oyler; Charles Robert Lambert; Mrs. Charles Robert Lambert; Edward C. Sawyer, attorney; Birg Sergent, attorney; Willard Osborne, head jailer, Buchanan County Virginia; Roger J. Makely. U.S. Magistrate, Dayton, Ohio; Ottmar G. Gallion; Keary Bob Williams, former Commonwealth's Attorney for Buchanan County, Virginia; Donald A. McGlothlin, Delegate to the

Virginia Legislature; Pleasant C. Shields, Director, Virginia Parole and Probation Board; and J. Marshall Coleman, Attorney General of Virginia. Nothing is alleged in this suit as to any actions on the part of any of these parties which have violated the constitutional rights of the plaintiffs. Therefore, it is ADJUDGED AND ORDERED that all of the abovementioned parties be dismissed as parties defendant to this suit.

Plaintiffs have also sued Nick E. Persin, Circuit Court Judge, Buchanan County, Virginia. In the allegations in the suit, plaintiff Bloch alleges that his constitutional rights were denied him in his trial because Judge Persin had committed several acts against the plaintiff Bloch and his witnesses and other parties. The court finds that judges, unless acting in clear absence of all jurisdiction, are immune from suit under 42 U.S.C. § 1985. See Stump v. Sparkman, 435 U.S. 349 (1978). Therefore, this suit is dismissed as to the defendant Nick E. Persin.

It is further to be noted that it is an essential element of an action under 42 U.S.C. § 1985 that there be some racial or otherwise class-based, invidious discrimination. Slavin v. Curry, 574 F. 2d 1256 (5th Cir. 1978). Construing plaintiffs' complaint in a light most favorable to them, there are no allegations of any racial or otherwise class-based discrimination that would permit a suit under this Section.

The plaintiffs have also sued Griffin Bell, Attorney General of the United States; William Webster, Director of the Federal Bureau of Investigation, Department of Justice; and, Richard L. Gibson, the FBI agent in Bristol, Virginia. As to these defendants, plaintiffs request that this court order the Justice Department to file criminal charges against the Mountain Mission School and also complain that the Federal Bureau of Investigation has failed to furnish plaintiff Bloch information in his file under the Freedom of Information Act. Plaintiffs therefore have filed a motion under 28 U.S.C. § 1361 for mandamus against the Attorney General and the FBI. In this

regard, it is to be noted that the United States District Court has the authority to enter an order of mandamus against an officer or an employee of the United States; however, it is well established that mandamus shall only be entered to require the performance of a ministerial act. Vishnevsky v. United States, 581 F. 2d 1249 (7th Cir. 1978). The decision of whether or not to prosecute is a discretionary act that is vested in the Attorney General of the United States and in the Justice Department and its various agencies, including the Federal Bureau of Investigation, and it is not incumbent upon this court to order these parties to bring criminal proceedings against an individual or an organization. Therefore, the petition for a writ of mandamus is denied and the allegations against the defendants Griffin Bell, William Webster and Richard L. Gibson are hereby dismissed.

As to the plaintiffs' complaint regarding the failure of these defendants to comply with the Freedom of Information Act, such a suit would be against the United States and should be filed in the jurisdiction in which the plaintiffs reside as set forth in 28 U.S.C. § 1402. Since plaintiffs reside in Florida, the action is not properly brought before this court.

Plaintiffs have also sued Paul H. Coleman, former Assistant Director of Ohio Department of Public Welfare; David W. Schwertfager, Chief, Bureau of Services for Families and Children, Ohio Department of Welfare; Donna Jean Gallion, Director, Holmes County Welfare Department; and Mrs. Sharon Mullett, caseworker of the Holmes County Welfare Department. The allegations concerning the Ohio Department of Welfare relate to the fact that Ohio law forbids sending a child to an institution not approved in writing by the Ohio State Welfare Department. Plaintiff Bloch complains that the Ohio Welfare Department did not properly take action to remove Ohio children from the custody of the Mountain Mission School,

which was not an approved institution. The plaintiffs in this suit do not have standing to file suit for other children who may have been sent from the Ohio Welfare Department to the Mountain Mission School and it is not alleged that this is a continuing matter that is not being taken care of at this time. See Curtis v. Peerless Ins. Co., 299 F. Supp. 429 (D.C. Minn. 1969). Also, the plaintiffs make certain complaints regarding Robert Watts. Similarly, these plaintiffs do not have standing to bring any suit on behalf of Robert Watts. Furthermore, it is not alleged that the aforementioned public officials of Ohio have in any way violated the constitutional rights of plaintiffs in this suit and, for this reason, the suit is dismissed as to all of these defendants.

Suit has also been filed in this case against Louis L. Wainwright, Secretary, Florida Department of Corrections, and Rosemary Griscom, Parole and Probations Officer, Florida Department of Corrections. Certain allegations are made against the Florida Probation system and the Florida Department of Corrections, although no specific allegations have been made against the defendants who are named in this suit. Plaintiff Bloch complains that he was denied permission from the Florida Department of Corrections to take the plaintiff Dotson to California to testify before United States Senator Allen Cranston; that the Florida Department of Corrections had denied permission for Dotson and Bloch to live together; and that psychiatric examinations have been required by the Florida Department of Corrections. It appears from the complaint that the plaintiff Bloch has been paroled and is subject to the supervision of the Florida Department of Corrections. Hence, this agency has the right and duty to supervise a person under parole and, among other matters, they have the right to regulate the travel of the parolees. See generally 59 Am. Jur. Pardon and Parole §§ 77-89 (1971). For this reason, suit is dismissed as to these defendants.

Finally, plaintiff Bloch seeks habeas corpus relief based upon an improper conviction in the Circuit Court of Buchanan County, Virginia. Suffice it to dismiss this action because plaintiff has not exhausted his remedies in the state system. The federal habeas corpus statute, 28 U.S.C. § 2254(b), specifically requires exhaustion of any adequate state remedy. Although plaintiff's time for appeal has run, he can still seek state habeas corpus relief. See, Slayton v. Parrigan, 215 Va. 27, 205 S.E. 2d 680 (1974).

Accordingly, it is ADJUDGED AND ORDERED that this suit be dismissed as to all defendants and stricken from the docket.

The Clerk of this court is directed to send certified copies of this Memorandum Opinion and Order to plaintiffs and to counsek for defendants.

ENTER: This 19 day of September, 1979.

/s/ Glen M. Williams
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION

DANIEL F. BLOCH, et al.,

Plaintiffs

v. CIVIL ACTION NO. 79–0125-B

THE MOUNTAIN MISSION SCHOOL, et al.,

Defendants

ORDER

In accordance with the Memorandum Opinion of this day, it is ORDERED that plaintiffs' motion for reconsideration be dismissed. However, it is further ORDERED that the dismissal Order of this case dated September 19, 1979, be vacated as to its findings on state action requirements under 42 U.S.C. § 1985 and as to the applicability of the statute of limitations to plaintiff Dotson.

The Clerk of this court is directed to send certified copies of this Order to plaintiffs and to counsel for defendants.

ENTER: This 2 day of November 1979.

/s/ Glen M. Williams
United States District Judge

MEMORANDUM OPINION

Plaintiffs have filed a "Motion for Reconsideration" asking this court to withdraw its dismissal Order entered in the above-styled case on September 19, 1979. It is contended that this court made several errors of law in that Order. Therefore, this motion shall be treated under Fed. R. Civ. P. 60(b).

The plethora of allegations which gave rise to this cause shall not be repeated in this opinion. Upon review of plaintiff's motion, it is felt that only three issues need be addressed. Hence this court finds no merit in the remainder of the plaintiffs' charges.

The first issue revolves around "racial or class-based discrimination" which is a necessary element under a 42 U.S.C. § 1985 suit. See Slavin v. Curry, 574 F. 2d 1256, 1262 (5th Cir. 1978). In the disputed Order, plaintiffs' § 1985 suit was dismissed for failure to allege this element.

In their motion, plaintiffs now allege that the "class-based" element is satisfied because they are poor and this is discriminatory because only "poor people...fall into the trap of needing an orphanage." This conclusion may very well be true, but it is irrelevant for § 1985 concerns.

Plaintiffs have merely contended that poor people are placed in orphanages, but have made no allegations that there was an invidiously discriminatory animus toward poor people behind defendants' actions. It is this intent factor, not recognition of a possible social truism, that provides the necessary element for § 1985. See Griffen v. Breckenridge, 403 U.S. 88, 102 (1971.) In other words, § 1985 "provides a cause of action where a conspiracy is directed against a person as a member of a class; it does not provide a cause of action where the alleged conspiracy is directed toward an individual personally." Duff v. Sherlock, 432 F. Supp. 423, 429 (E.D. Penn. 1977).[1]

1 It should be noted that the Griffen and Duff cases cited above specifically dealt with § 1985(3). But, as Slavin, 574 F. 2d at 1262, points out, the racial or class-based discrimination element Griffen required for § 1985(3) has been accepted for § 1985(2) suits in at least seven circuits. This court is persuaded that those circuits have reached the correct result.

In accordance with the above, and without ruling whether or not poor people could be considered a class in this situation, this court's prior dismissal of plaintiffs' § 1985 suit is upheld.

It is next contended that the court erred in ruling that a finding of state action is required in § 1985 suits. This point is well taken and any ruling made on state action in the prior Order is hereby vacated.

Griffen, supra, made it clear that a § 1985(3) suit does not require a finding of state action, at least in racial discrimination cases, and the courts are in conflict as to whether § 1985(2) requires state action.[2] See Bellamy v. Mason's Stores, Inc., 508 F. 2d 504 (4th Cir. 1974); Stith v. Barnwell, 447 F. Supp. 970 (M.D.N.C. 1978). But, for this case, a decision need not be made because plaintiffs are already precluded from suit for failure to allege a racial or class-based invidiously discriminatory animus.

Similarly, the contention that the statute of limitations for § 1985 was tolled as to the infant Dotson is accepted and the prior Order is so altered. However, the dismissal Order is not affected because the infant Dotson was already precluded from suit for failure to allege a racial or class-based invidiously discriminatory animus.

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2 The conflict basically centers around whether the constitutional base of § 1985(2) lay in the Thirteenth or Fourteenth Amendment. The former does not require state action, whereas the latter would require state action.

In accordance with the reasons stated above, plaintiffs' motion for reconsideration is dismissed. However, the dismissal Order in this case of September 19, 1979, is vacated as to its findings on state action requirements under § 1985 and as to the applicability of the statute of limitations to the infant plaintiff.

The Clerk of this court is directed to send certified copies of this Memorandum Opinion to plaintiffs and to counsel for defendants.

ENTER: This 2 day of November 1979.

/s/ Glen M. Williams
United States District Judge

NO. 82-1164

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

JOHNNY J. DOTSON and
DANIEL F. BLOCH

Petitioners

v.

MOUNTAIN MISSION SCHOOL, INC., ET AL

Respondents

ON WRIT OF CERTIORARI TO THE
UNITED STATES SUPREME COURT
FROM THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

This Brief in Opposition to petitioners' Petition for Writ of Certiorari is being filed on behalf of the Mountain Mission School, its sixteen defendant officers, directors and employees, Keary Bob Williams and Willard Osborne, all of whom were included by the U.S. Fourth Circuit Court of Appeals in the group referred to as the "Virginia Defendants". (Petition for Cert. at 10).

The Fourth Circuit Court of Appeals affirmed the District Court's dismassal of all of petitioner Johnny J. Dotson's claims against Mountain Mission School, its sixteen defendant officers, directors, employees, Williams and Osborne. (Petition for Cert. at 29.) Since Mr. Dotson's claims were dismissed in the Fourth Circuit as to all parties on whose behalf this Brief is being filed, only those claims for which Mr. Bloch has standing should be considered.

The case has been appealed on summary rulings and no evidence has been presented. The Fourth Circuit has remanded the case to the District Court level for further consideration of the merits, and this case is now proceeding in the U.S. District Court for the Western District of Virginia through the normal discovery process in anticipation of a trial on the merits.

Mr. Bloch, who is the only petitioner still involved in this proceeding as against the Mountain Mission School and other defendants in this Brief, has never been a student, resident or employee of the Mountain Mission School and there is no indication in the record that he is the father of any children who have resided at Mountain Mission School, or has any connection with any other licensed child care facility in the Commonwealth of Virginia. The only connection between Mr. Bloch and Mountain Mission School indicated by the record thus far is that Mr. Bloch was charged with abduction of two children from Mountain Mission School and later tried in a Virginia Circuit Court in the Western District of Virginia, and on May 27, 1975, after plea bargaining, pleaded guilty to the felony of

abduction. Mr. Bloch has filed his Petition for a Writ of Habeas Corpus in other proceedings, with which this Court is not herein concerned. Petitioners' *Statment of the Case* sets forth no allegations of injury to Mr. Bloch. Nevertheless, Mr. Bloch continues to complain that Virginia Code Section 63.1-218 (1980) is unconstitutional.

The Fourth Circuit Court in its Opinion in this proceeding stated as dictum that the petitioners had not included the proper parties to contest the constitutionality of the aforesaid statute but went on to rule that the statute was constitutional. (Petition for Cert. at 17.) Petitioners, in their second question presented for review, imply that, based on the provisions of Virginia Code Section 63.1-218, the Commonwealth of Virginia exempts the Mountain Mission School from state regulations designed to protect, benefit and harbour state orphans. (Petition for Cert. at 1.) Virginia Code Section 63.1-218 provides, in essence, that only the provisions of Chapter 10 of Title 63 of the 1950 Code of Virginia will not apply to any private school or charitable institution incorporated under the laws of the State of Virginia and located West of the Sandy Ridge and on the watersheds of the Big Sandy River and to which no contributions are made by the State of Virginia or any agency thereof. (Appendix, p. 10.) Chapter 10 is only the State's licensing law and does not contain Virginia's statutes as to the investigation of child abuse and neglect. The Virginia statutory scheme concerning the reporting of and the investigation of child abuse and neglect is contained in Chapter 12.1 of Title 63 of the 1950 Code of Virginia, as amended. The policy of Virginia as set forth in Chapter 12.1 in the first section of said chapter, Section 63.1-248.1, is to assure ". . . that protective services will be made available to an abused or neglected child in order to protect such a child . . and to prevent further abuse or neglect, . . . ". (Va. Code Section 63.1-248.1.) Chapter 12.1 is applicable to the Mountain Mission School as it is to all other institutions, homes and other entities in the Commonwealth of Virginia.

It is important to note that the provisions of Chapter

12.1, also require that the State Department of Welfare through its local department shall make an immediate investigation upon receipt of a report or complaint of child abuse or neglect. (See Va. Code Section 63.1-248.6(D)(1.), Appendix, page 11). This chapter also authorizes any person required to make a report or investigation pursuant to a complaint of child abuse or neglect to talk to the child suspected of being abused or neglected. (Va. Code Section 63.1-248.10, Appendix, page 13). Therefore, the law of Virginia does require all institutions, homes and other entities, including the Mountain Mission School, to be opened to inspection by the State Department of Welfare if there is a report of abuse or neglect to a child.

SUMMARY

The essence of petitioners' argument is that the employees and staff of Mountain Mission School are guilty of child abuse and neglect of its students; that this abuse and neglect cannot be investigated because Va. Code Section 63.1-218 excludes the geographical area in which Mountain Mission School is located from the licensing requirements of Chapter 10 of Title 63 of the 1950 Code of Virginia (as amended); and, consequently, that the students of Mountain Mission School are not receiving equal protection of the law because the State authorities cannot legally investigate the alleged abuse and neglect. Petitioners have completely misconstrued and misrepresented the import of the section under attack. As pointed out in the *Statement of the Case*, the aforesaid Section applies only to Chapter 10, which is purely a licensing section. The Commonwealth of Virginia has a very effective and comprehensive statutory scheme for the reporting and investigation of child abuse and neglect as set forth in Chapter 12.1 of Title 63 of the Code of Virginia. Therefore, petitioners' allegations that the statutes of Virginia preclude State authorities from legally investigating alleged child abuse and neglect at

Mountain Mission School are simply not true.

Appellees submit that this proceeding is not one in which a Writ of Certiorari should be granted. The matter is here merely on a summary judgement. If this Court were to grant a Writ of Certiorari at this time, the proceeding would be without the benefit of a record of any evidence and would, in fact, be prior to the trial of this matter on the merits. As noted *supra*, Mr. Dotson has been dropped as a party against the Mountain Mission School and other defendants included in this Brief; and Mr. Bloch is without standing to bring this action even if there were merit to the allegations. Furthermore, the petitioners have not even joined the proper parties adversary to attack the constitutionality of the alleged section; as pointed out by the Fourth Circuit Court of Appeals, the petitioners should have included the proper State officials in any desired attack on a State licensing statute. (Petition for Cert. at 16.)

The Mountain Mission School vehemently denies that there is now, or has ever been, abuse or neglect of its students, and submits that Mr. Bloch's action arises due to his desire for vengeance.

ARGUMENT

I. PETITIONERS HAVE NOT SHOWN THE EXISTENCE OF A FEDERAL QUESTION.

Petitioners contend that Federal questions were raised in the Fourth Circuit Court of Appeals when it quoted decisions and authorities of the Supreme Court of the United States on constitutional law. (Petition for Cert. at 7.) Decisions of the Supreme Court of the United States are cited many times by courts of Federal and State jurisdiction, but such cites do not in any way confirm that any issues involved in such proceeding are Federal questions giving rise to Federal jurisdiction.

As to Question No. 2 presented by petitioners, the existence of a federal question has not been adequately shown in the appropriate section of the Petition for Certiorari.

II. THE PETITION FOR WRIT OF CERTIORARI DOES NOT COMPLY WITH THE RULES OF THE SUPREME COURT OF THE UNITED STATES.

Supreme Court Rule 21.2 provides that the Clerk shall not accept any Petition for Writ of Certiorari that does not comply with Rules 21 and 33. Petitioners' Writ of Certiorari does not comply with Rules 21 and 33 in the following respects:

(A) Supreme Court Rule 21.1 (b) requires in part that the petitioners supply to this Court "A list of all parties to the proceeding in the court whose judgement is sought to be reviewed, . . . ". Petitioners have not compiled with said Rule.

(B) Supreme Court Rule 21.1(f) requires petitioners to cite all constitutional provisions, treaties, statutes, etc., which the case involves. Although petitioners have not separately cited and set out verbatim Virginia Code Section

63.1-218, petitioners have included a portion of the U.S. Court of Appeals Opinion including said clause. However, the stated section taken alone does not provide much information to this Court. The section refers only to the other provisions of the chapter in which it is contained, and the other applicable provisions are not set out verbatim nor are they even cited for this Court to consider. Therefore, petitioners are not in compliance with Rule 21.1(f).

III. MR. BLOCH HAS NO STANDING TO CONTEST THE STATE STATUTE.

The 1950 Code of Virginia, Section 63.1-218 exempts a certain geographical area from licensing requirements. Mr. Bloch has no interest in any institution subject to the licensing requirements or exempted from said licensing requirements either as an employee, director, resident, student, or otherwise. Furthermore, as set out in petitioners' own Complaint, Mr. Bloch is not even a resident of the State of Virginia. The only connection of Mr. Bloch to Mountain Mission School indicated in the lower court's proceedings was his conviction for abducting children from Mountain Mission School. Although Mr. Bloch has filed or assisted in filing numerous suits to attack Mountain Mission School and other entities in various State and Federal Courts since his plea of guilty and conviction in 1975 for felonious child abduction, it is difficult to see how Mr. Bloch's interests have ever been affected by Mountain Mission School, unless Mr. Bloch's interests could be considered to be affected as a result of Mountain Mission School's notification to the authorities of the abduction of two male students by Mr. Bloch. Mr. Bloch's interests were subsequently affected because, based on the two students' statements, he was arrested and placed in jail on two counts of felonious abduction. This incarceration resulted from the investigation by Federal and State authorities upon Mountain Mission School's notification. Additional facts concerning this incident were presented to this Court in Docket

No. 82-604 which involved Mr. Bloch's Petition for a Writ of Certiorari arising out of his suit against Mountaineer Publishing Company, Inc., et al, because of the said paper's coverage of his trial. (Cert. denied, *Bloch v. Compton, et al*, No. 82-604, Nov. 29, 1982.) It is submitted that this is the only connection Mr. Bloch has had with Mountain Mission School or any other child care facility in the State of Virginia, but this connection should not provide Mr. Bloch with standing to attack the constitutionality of the licensing statutes in the State of Virginia.

In his Complaint filed in the United States District Court for the Western District of Virginia, Mr. Bloch intimates that he has attempted to expose the truths about Mountain Mission School, and that numerous agencies and individuals have been involved in this continuing saga including the Governor of Virginia, the FBI, the ACLU, various reporters, and the Ohio Welfare Department. It is interesting to note that of all of these agencies, including the FBI, only Mr. Bloch, who suffered a felony conviction at the instance of Mountain Mission School, has taken affirmative action and has sued Mountain Mission School for $100,000,000 in this proceeding.

IV. THE STATUTE COMPLAINED OF IS A LICENSING STATUTE.

Mr. Bloch attacks Va. Code Section 63.1-218, alleging that it prevents investigation by Virginia authorities of alleged child abuse and neglect at Mountain Mission School. The cited statute excludes a certain geographical area in the State of Virginia from Chapter 10 of Title 63 of the 1950 Code of Virginia (as amended), which concerns the licensing of child care facilities but does not exclude such area from the coverage of the Virginia child abuse and neglect statutes. The Virginia child abuse and neglect statutes are not found in Chapter 10, but are to be found in Chapter 12.1 of Title 63 of the 1950 Code of Virginia, Section 63.1-248.1, et. seq. The aforesaid Chapter 12.1 sets forth the policy of Vir-

ginia embodied in Chapter 12.1, which is to identify children who are being abused or neglected, protect such children and prevent further abuse or neglect. (See Va. Code Section 63.1-248.1, Appendix, p. 10.) Virginia child abuse and neglect regulations do apply to Mountain Mission School as well as every other entity in Virginia. If there is any child abuse or neglect at Mountain Mission School, it is subject to investigation and regulation by the Commonwealth of Virginia since Virginia Code Section 63.1-218 has nothing to do with Chapter 12, the Virginia statutory scheme for investigation of child abuse and neglect. (See Appendix, p. 10) for a more complete description of some of the statutory safeguards provided.) Virginia does provide equal protection to all children who may be abused or neglected, and there are no exceptions. Mr. Bloch's contention that Virginia law prevents inspection and investigation of complaints of child abuse and neglect at Mountain Mission School is without basis.

V. NO STATE OFFICIALS ARE DEFENDANTS IN THIS SUIT WHICH ATTACKS THE CONSTITUTIONALITY OF A STATE STATUTE.

As pointed out by the United States Fourth Circuit Court of Appeals in its Opinion in this case, petitioners should have included the State officials who enacted this legislation. The proper proceeding for attacking the constitutionality of a State statute is to include the State authorities so they can be heard and present any evidence which may enlighten this Court as to the rationale and effect of such statute. (Petition for Cert. at 16-17.)

VI. CONSIDERATIONS GOVERNING REVIEW OF CERTIORARI.

It is submitted that there are no good reasons indicating that this proceeding should be reviewed.

(A) The United States Fourth Circuit Court of

Appeals has rendered no decision in this proceeding which conflicts with the decision of any other Federal or State court of last resort on these matters; rather, the Fourth Circuit Court of Appeals has attempted to follow the firmly established majority on each point considered. Furthermore, the United States Fourth Circuit Court of Appeals in its decision in this matter has not departed from the accepted and usual course of judicial proceedings nor has it sanctioned such departure by the District Court which originally ruled in this matter.

(B) No decision by a state court of last resort is being challenged here. Although petitioner Dotson did not advise the Court, he has brought a similar challenge in the Supreme Court of Virginia and has been denied relief there. The defendants are not advised whether Mr. Dotson has attempted to appeal the aforesaid State Court decision.

(C) This issue is not an important question of Federal law, and Virginia has a sufficient statutory scheme to protect its citizens from the ills and dangers specified by Mr. Bloch. It is submitted that the attempt by Mr. Bloch to attack the specified statute is obviously a further attempt to vent his vengeance against the institution which he blames for his felony conviction and not a good faith attempt to correct any wrong. Furthermore, the decision rendered in this proceeding by the Fourth Circuit Court of Appeals in no way conflicts with any applicable decisions of this Court nor has said Circuit Court espoused any new theory of law or raised any new or novel issues.

Wherefore, for the foregoing reasons, the defendants herein represented move this Court to deny the petitioners' Petition for Writ of Certiorari.

APPENDIX

Va. Code § 63.1-218. Chapter not to apply to certain schools and institutions. — None of the provisions of this chapter shall apply to any private school or charitable institution incorporated under the laws of this State, which is located west of Sandy Ridge and on the watersheds of Big Sandy river, and to which no contributions are made by the State or any agency thereof. (Code 1950, §63-255; 1968, c. 578.)

Va. Code § 63.1-248.1. Policy of the State. — The General Assembly declares that it is the policy of this Commonwealth to require reports of suspected child abuse and neglect for the purpose of identifying children who are being abused or neglected, of assuring that protective services will be made available to an abused or neglected child in order to protect such a child and his siblings and to prevent further abuse or neglect, and of preserving the family life of the parents and children, where possible, by enhancing parental capacity for adequate child care. (1975, c. 341.)

Va. Code § 63.1-248.4. Complaints by others of certain injuries to children. — Any person who suspects that a child is an abused or neglected child may make a complaint concerning such child, except as hereinafter provided, to the local department of the county or city wherein the child resides or wherein the abuse or neglect is believed to have occurred. If an employee of the local department is suspected of abusing or neglecting a child, the complaint shall be made to the juvenile and domestic relations district court of the county or city where the abuse or neglect was discovered. Such a complaint may be oral or in writing and shall disclose all information which is the basis for the suspicion of abuse or neglect of the child. (1975, c. 341; 1976, c. 348.)

Va. Code § 63.1-248.6. Local departments to establish child-protective services; duties. — A. Each local department shall establish child-protective services under a departmental coordinator within such department or with one or more adjacent local departments which shall be staffed with qualified personnel pursuant to regulations promulgated by the State Board of Welfare. The local department shall be the public agency responsible for receiving and investigating complaints and reports, except that (i) in cases where the reports or complaints are to be made to the juvenile and domestic relations district court, the court shall be responsible for the investigation and (ii) in cases where an employee at a private or state-operated hospital, institution or other facility is suspected of abusing or neglecting a child in such hospital, institution or other facility, the local department may request the Department to assist in conducting the investigation in accordance with rules and regulations approved by the State Board.

B. The local department shall insure, through its own personnel or through cooperative arrangements with other local agencies, the capability of receiving reports or complaints and responding to them promptly on a twenty-four hours a day, seven days per week basis.

C. The local department shall widely publicize a telephone number for receiving complaints and reports.

D. The local department shall upon receipt of a report or complaint:

1. Make immediate investigation;

2. When investigation of a complaint reveals cause to suspect abuse or neglect, complete a report and transmit it forthwith to the central registry;

3. When abuse or neglect is found, arrange for necessary protective and rehabilitative services to be provided to the child and his family;

4. If removal of the child or his siblings from his home is deemed necessary, petition the court for such removal;

5. When abuse or neglect is suspected in any cases involving death of a child or injury to the child in which a

felony is also suspected for which the penalty prescribed by law is not less than five years imprisonment or where there is sexual abuse or suspected sexual abuse of a child involving the use or display of the child in sexually explicit visual material, as defined in § 18.2-374.1, report immediately to the Commonwealth's attorney and make available to the Commonwealth's attorney the records of the local department upon which such report is founded;

6. Send a follow-up report based on the investigation to the central registry within fourteen days and at subsequent intervals to be determined by department regulations;

7. Determine within forty-five days if a report of abuse or neglect is founded or unfounded and transmit a report to such effect to the central registry;

8. If a report of abuse or neglect is unfounded, transmit a report to such effect to the complainant and parent or guardian and the person responsible for the care of the child in those cases where such person was suspected of abuse or neglect.

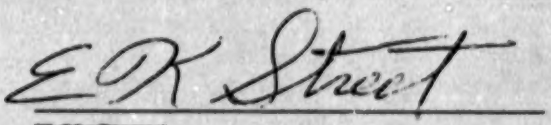
E. The local department shall foster, when practicable, the creation, maintenance and coordination of hospital and community-based multi-discipline teams which shall include where possible, but not be limited to, members of the medical, mental health, social work, nursing, education, legal and law-enforcement professions. Such teams shall assist the local departments in identifying abused and neglected children, coordinating medical, social, and legal services for the children and their families, helping to develop innovative programs for detection and prevention of child abuse, promoting community concern and action in the area of child abuse and neglect, and disseminating information to the general public with respect to the problem of child abuse and neglect and the facilities and prevention and treatment methods available to combat child abuse and neglect. The local department shall also coordinate its efforts in the provision of these services for abused and neglected children with the judge and staff of the court.

F. The local department shall report annually on its activities concerning abused and neglected children to the court and to the Child-Protective Services Unit in the Department on forms provided by the Department. (1975, c. 341; 1978, c. 747; 1979, cc. 347, 348.)

Va. Code § 63.1-248.10. Authority to talk to child or sibling. — Any person required to make a report or investigation pursuant to this chapter may talk to any child suspected of being abused or neglected or to any of his siblings without consent of his parent or guardian. (1975, c. 341; 1979, c. 453.)

CERTIFICATE OF SERVICE

I hereby certify that six copies of the foregoing Brief in Opposition to Petitioners' Petition for a Writ of Certiorari were mailed to Larry Helm Spalding, Esq., 6624 Gateway Avenue, Sarasota, Fla., 33581, counsel for Petitioners' on this the 11th day of February, 1983.



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CASE NO. 82-1164

IN THE

Supreme Court of the United States

OCTOBER TERM 1982

JOHNNY J. DOTSON and
DANIEL F. BLOCH,
Petitioners—Plaintiffs,

v.

MOUNTAIN MISSION SCHOOL, INC. et al.,
Respondents—Defendants.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. DOES 42 U.S.C. SECTION 1985 CONFER UPON FEDERAL COURTS PERSONAL JURISDICTION IN A FORUM STATE OVER NON–CONSENTING, NON–RESIDENT DEFENDANTS?

2. DID THE COURT OF APPEALS EXERCISE THE PROPER EQUAL PROTECTION REVIEW OF VA. CODE SECTION 63.1-218?

LIST OF ALL PARTIES

Plaintiffs:

Johnny J. Dotson and Daniel F. Bloch.

Defendants:

The Mountain Mission School Inc., Charles M. Sublett, James Marvin Swiney, Mrs. James Marvin Swiney, Mrs. Charles M. Sublett, Paul M. Platt, Mabel Abbott, Jim Stanley, Minnie Grannert, Dr. Thomas D. McDonald, Dr. J.P. Sutherland, Fred Short, Rev. Clarence Greenleaf, Mrs. Sylvia Raines, Mrs. B.D. Phillips, Bud Degaffrillo, Keary Bob Williams, Donald A. McGlothlin, Nick E. Persin, Pleasant C. Shields, J. Marshall Coleman, Louie L. Wainwright, Rosemary Griscom, Paul H. Coleman, David W. Schwertfager, Donna Jean Gallion, Mrs. Sharon Mullett, Robert Beck, Asa Mellor, Wanda Mellor, Gary Oyler, Ruth Oyler, Charles Robert Lambert, Mrs. Charles Robert Lambert, Griffen Bell, William Webster, Edward C. Sawyer, Birg Sergent, Willard Osborne, Roger J. Makely, Ottmar G. Gallion, Richard L. Gibson.

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OPINION BELOW

The opinion of the court of appeals is not reported. The text of the opinion is set forth in the RESPONDENTS' APPENDIX, pp. A-1 – A-20.

JURISDICTION

28 U.S.C. Section 1254 confers upon the United States Supreme Court jurisdiction to review the judgment in question by writ of certiorari. The judgment in question was entered by the United States Court of Appeals for the Fourth Circuit on October 18, 1982. An order denying a rehearing was entered on November 12, 1982.

STATUTES AND RULES INVOLVED

The complete text of 42 U.S.C. Section 1985, Va. Code Section 63.1-218 and Fed. R. Civ. P. 4(e) and (f), is set forth in the RESPONDENTS' APPENDIX, pp. A-21 – A-24.

STATEMENT OF THE CASE

On June 11, 1979, the Plaintiffs-Petitioners filed a lawsuit in the United States District Court for the Western District of Virginia, at Big Stone Gap. The complaint alleged causes of action grounded primarily on 42 U.S.C. Section 1985, and sought declaratory, injunctive and monetary relief. Named as defendants were the Mountain Mission School, Inc. and forty-two individuals, including officials of the United States, Virginia, Ohio and Florida.

The Defendants-Respondents herein, Paul H. Coleman, former Assistant Director of the Ohio Department of Public Welfare, and David W. Schwertfager, Chief of the Bureau of Services for Families and Children for the Ohio Department of Public Welfare, filed answers alleging numerous defenses, including lack of personal jurisdiction. By memorandum opinion and order dated September 19, 1979, the district court dismissed the complaint on a number of grounds, and the Plaintiffs-Petitioners timely appealed to the United States Court of Appeals for the Fourth Circuit.

On October 18, 1982, the court of appeals affirmed the lower court's judgment in part, and reversed in part and remanded the case for further proceedings consistent with its opinion. (See Res. App., pp. A-1 – A-20). The court of appeals' opinion discussed seven separate issues, but only the opinion's discussion of the constitutionality of Va. Code Section 63.1-218, and the personal jurisdiction over the defendants for purposes of injunctive and compensatory relief is material to the consideration of the questions presented for review.

The court of appeals, in reviewing the constitutionality of Va. Code Section 63.1-218, initially noted that the Plaintiffs-Petitioners had failed to join as party-defendants either the State of Virginia or the state agency responsible for administering the statute. The court went on to adjudge that the distinction drawn by the statute in question did not harm a discrete and insular minority or impinge upon a fundamental interest. (See Res. App., p. A-6). Applying the minimum rationality test, the court of appeals concluded that the constitutional challenge to Va. Code Section 63.1-218 had no merit. (See Res. App., p. A-7).

In the discussion of the plaintiffs' request for injunctive and compensatory relief, the court of appeals divided the forty-one defendants into five groups for the purpose of determining if personal jurisdiction existed. (See Res. App., p. A-8). Defendants-Respondents Coleman and Schwertfager were grouped with the other Ohio and Florida defendants who had filed answers that explicitly alleged a lack of personal jurisdiction. Citing Fed. R. Civ. P. 4(f) and Va Code 8.01-328.1(A)(4), the court of appeals held, under the traditional long-arm statute analysis, that the district court lacked personal jurisdiction over those out-of-state defendants who affirmatively alleged a lack of personal jurisdiction in their answers. (See Res. App., p. A-10).

ARGUMENT IN OPPOSITION TO ALLOWANCE OF THE WRIT

I. THE DECISION BELOW DID NOT RAISE THE FIRST QUESTION PRESENTED IN THE PETITION FOR WRIT OF CERTIORARI.

The first Question Presented in the petition (p.i.) is whether 42 U.S.C. Section 1985 permits a federal court to exercise personal jurisdiction over non-consenting out-of-state defendants. In paragraph 10 of the petition's Argument (p. 10) the Plaintiffs-Petitioners argue that the United States Court of Appeals erred in finding that 42 U.S.C. Section 1985 does not permit federal courts to exercise personal jurisdiction over nonconsenting, out-of-state defendants. The Fourth Circuit, however, neither made this finding nor decided that question in this proceeding.

In Part VI of its opinion (Res. App., p. A-7) the Fourth Circuit merely held that the Plaintiffs-Petitioners must establish personal jurisdiction through the procedures set forth in Rule 4 of the Fed. R. Civ. P. The Fourth Circuit further stated that when the defendants are not located within the forum state, a plaintiff can obtain jurisdiction in the manner prescribed by the state in which the district court is located. Based on this traditional analysis of personal jurisdiction, the Fourth Circuit opined that the Virginia long-arm statute did not extend to the nonresident defendants, including Defendants-Respondents Paul Coleman and Schwertfager.

The Fourth Circuit did not reach the question of whether 42 U.S.C. Section 1985 authorizes nationwide service of process. The reason for this is obvious. Rule

4(f) of the Fed. R. Civ. P. (Res. App., p. A-23) provides that unless authorized by a statute of the United States or of the forum state, service of process other than a subpoena is limited to the territorial limits of the state in which the district court is held. The remedial language of 42 U.S.C. Section 1985 (Res. App., p. A-21) does not specifically provide for nationwide service of process. Furthermore, 28 U.S.C. Section 1343, [1] which confers original jurisdiction upon the district courts in Section 1985 actions, deals with jurisdiction of the subject matter, not with personal jurisdiction over the defendants in the litigation. *See Smith v. Ellington,* 348 F.2d 1021 (6th Cir. 1965), *cert. den.,* 382 U.S. 998 (1966); *Safeguard Mutual Insurance Company v. Maxwell,* 53 F.R.D. 116 (E.D. Pa. 1971). Thus, the Fourth Circuit did not address the first Question Presented since 42 U.S.C. Section 1985 does not deal with personal jurisdiction.

II. ABSENT A RULING BY THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT WHICH EITHER ADOPTS OR REJECTS A CONSPIRACY THEORY OF PERSONAL JURISDICTION, NO REASONS EXIST FOR A GRANT OF CERTIORARI.

Paragraphs 9-13 of the petition's Argument (pp. 9-10) tacitly admit that the district court lacked personal

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1. In paragraph 12 of the petition's Argument (p. 10), the Plaintiffs-Petitioners contend that 42 U.S.C. Section 1985 must be construed to provide nationwide service of process; otherwise, conspiracies committed in Washington D.C. would not fall within Section 1985 since the District of Columbia is not a state. This logic is a *non sequitor* because the District of Columbia is in fact considered a "state" for purposes of 28 U.S.C. Section 1343(b), the jurisdiction statute for 42 U.S.C. Section 1985.

jurisdiction over the nonresident defendants in this case under the traditional long-arm statute analysis. These paragraphs do argue, however, that personal jurisdiction should exist over the out-of-state defendants pursuant to the conspiracy theory of personal jurisdiction.

This theory has been addressed by a scattered number of district courts. *E.g., Socialist Workers Party v. Attorney General,* 375 F.Supp. 318, 321-22 (S.D.N.Y. 1974); *Mandelkorn v. Patrick,* 359 F.Supp. 692, 694-97 (D.D.C. 1973). Several district courts within the jurisdictional territory of the Fourth Circuit have, in fact, adopted the conspiracy theory where the question has arisen. *E.g., Gemini Enterprises, Inc. v. WFMY Television Corp.,* 470 F.Supp. 559, 564 (M.D.N.C. 1979); *McLaughlin v. Copeland,* 435 F.Supp. 513 (D.Md. 1977). Nevertheless, the conspiracy theory of jurisdiction was not raised by the Plaintiffs-Petitioners in the matter *sub judice* at either the district court level, or the court of appeals level. Furthermore, Plaintiffs-Petitioners do not refer to any reported or unreported decisions of the Court of Appeals for the Fourth Circuit which raise the issue of the conspiracy theory of personal jurisdiction.

There are two reported court of appeals decisions that discuss the conspiracy theory. *Chrysler Corp. v. Fedders Corp.,* 643 F.2d 1229 (6th Cir. 1981); *Glaros v. Perse,* 628 F.2d 679 (1st Cir. 1980). In *Chrysler Corp.,* the Sixth Circuit neither adopted nor rejected the conspiracy theory of *in personam* jurisdiction. The First Circuit in *Glaros* expressly refused to recognize the theory. Unlike the district courts and the First and Sixth Circuits in the cases above, the Fourth Circuit Court of Appeals has not adopted a position on the issue of the conspiracy theory. Therefore, there does not exist any conflict between the Fourth Circuit and the other courts on that issue so as to create a basis for granting certiorari.

This court should further note that the Plaintiff-Petitioner Bloch, alleging basically the identical wrongdoings, has filed a separate suit in the United States District Court for the Northern District of Ohio, Eastern Division, against many of the same defendants, including Respondent Schwertfager. *Robert Lee Watts, et al. v. Donna Jean Gallion, et al.*, Case No. C81–1139, filed June 1, 1981 (Judge Aldrich). Since personal jurisdiction over the Ohio defendants in the *Watts* case has not, and cannot be challenged in that action, it is clear that the Civil Rights Act is fulfilling its function of providing an adequate remedy for the vindication of the plaintiff's rights.

III. THE ISSUE RAISED IN THE PETITION'S SECOND QUESTION PRESENTED IS NOT SUFFICIENTLY IMPORTANT TO WARRANT THIS COURT'S ATTENTION.

The second Question Presented in the petition (p.i.) seeks this Court's review of the constitutionality of the provisions of Va. Code Section 63.1-218 (Res. App., p. A-21) which exclude from the state's child care licensure laws any private school or incorporated charitable institution located west of Sandy Ridge and on the watersheds of the Big Sandy river. The Defendants-Respondents submit that the issue of the constitutionality of this statute lacks overall national importance sufficient to warrant a grant of certiorari.

The Fourth Circuit, in its review of the statute, found that it does not harm a discrete and insular minority or impinge on a fundamental interest. Applying the minimum rationality test, the Fourth Circuit held Va.

Code Section 63.1-218 to be constitutional. The court of appeals merely adopted a long-respected doctrine. *Cf. Schweiker v. Wilson,* 450 U.S. 221 (1981). Paragraphs 1-8 of the petition's Argument (pp. 8-9) do not reference any authority that would dispute the correctness of the Fourth Circuit's decision.

These same paragraphs apparently do not accurately or fully set forth the facts surrounding the pertinent Virginia statutes. The Brief In Opposition to Petition For Writ of Certiorari filed by the Defendants-Respondents Mountain Mission School and its officials and employees contends that although Va. Code Section 63.1-218 excludes from licensure the geographical area in which the Mountain Mission School is located, the school still falls within the protective web of the state's child abuse and neglect statutes set forth in Va. Code Chapter 12.1 of Title 63. *See,* Respondent Mountain Mission School's Brief in Opposition, pp. 2-3, 7-8. Yet, on the other hand, the Plaintiffs-Petitioners argue that the residents of the Mountain Mission School are not afforded the same statutory and regulatory safeguards as residents of other similar institutions. This is simply not the case, however, as the clear language of the pertinent Virginia statutes provides for child-protective services for all children in Virginia. *See* text of the statutes found in the Appendix of Respondent Mountain Mission School's Brief in Opposition. Therefore, the Plaintiffs-Petitioners misstated essential facts regarding their equal protection claims.

CONCLUSION

Because of the interlocutory nature of the opinion below, and for the above-stated reasons, this case is not one which requires the exercise of the United States Supreme Court's extraordinary and discretionary review. Accordingly, the petition for writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari have been forwarded via the U.S. Mail, first class postage prepaid, this _____ day of February, 1983, to each of the following: Larry H. Spalding, Lewis & Spalding, 6624 Gateway Avenue, Sarasota, Florida 33581; Linwood T. Wells, Jr., Assistant Attorney General, 830 E. Main Street, Room 900, Richmond, VA 23219; E.K. Street, P.O. Drawer S, Grundy, VA 24614; E. Montgomery Tucker, U.S. Attorney, P.O. Box 1709, Roanoke, VA 24008; Birg E. Sergent, P.O. Box 426, Pennington Gap, VA 24277; Mr. and Mrs. Charles R. Lambert, 104 River Road, Ellwood City, PA 16117; Robert P. Beck, 101 S. Washington Street, Millersburg, OH 44654; Roger J. Makley, IBM Building, W. Second Street, Dayton, OH 45401; Edward C. Sawyer, 7000 S.W. 62nd Avenue, Suite B-234, So. Miami, FL 33143; and Martin Friedman, Assistant Attorney General, Capitol Building, Tallahassee, FL 32301.

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UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 79–1771

Johnny J. Dotson and
Daniel F. Bloch,

Appellants,

v.

The Mountain Mission School;
Charles M. Sublett, President;
James Marvin Swiney, Vice-President;
Mrs. James Marvin Swiney, Secretary;
Bernice Sublett, Treasurer; Paul M.
Platt, Teacher; Mabel Abbott, Teacher;
Jim Stanley, Teacher; Minnie Grannert,
Teacher; Dr. Thomas D. McDonald;
Dr. J.P. Sutherland; Fred Short;
Herman T. Wells; Rev. Clarence
Greenleaf; Mrs. Sylvia Raines;
Mrs. B.D. Phillips; Bud Degaffrillo;
Keary Bob Williams; Donald A. McGlothlin;
Nick E. Persin; Pleasant C. Shields;
J. Marshall Coleman; Louie L. Wainwright;
Rosemary Griscom; Paul H. Coleman;
David W. Schwertfager; Donna Jean Gallion;
Mrs. Sharon Mullett; Robert Beck;
Asa Mellor; Wanda Mellor; Gary Oyler;
Ruth Oyler; Charles Robert Lambert;
Mrs. Charles Robert Lambert (Lynda);
Griffin Bell; William Webster;
Edward C. Sawyer; Birg Sergent; Willard
Osborne; Roger J. Makely; Ottmar G.
Gallion; Richard L. Gibson,

Appellees.

Appeal from the United States District Court for the Western District of Virginia, at Big Stone Gap. Glen M. Williams, District Judge.

Submitted December 10, 1981
Decided October 18, 1982

Before WINTER, Chief Judge, BUTZNER and RUSSELL, Circuit Judges.

(Johnny J. Dotson and Daniel F. Bloch, Appellants' Pro Se; E. Montgomery Tucker, Acting U.S. Attorney; Martin Friedman, Attorney General's Office; Linwood T. Wells, Jr., Assistant Attorney General; Robert P. Beck; Birg E. Sergent; E. K. Street, Street, Street & Street, on brief for Appellees.)

UNPUBLISHED

PER CURIAM:

Daniel Bloch, pro se plaintiff, is an individual who has become interested in the activities of The Mountain Mission School, an orphanage located in Western Virginia. He has never been a resident or employee of the orphanage. He believes that children at the orphanage are illegally abused, and that public officials and private individuals have committed illegal acts, some of them harming Bloch, in an effort to cover up the abuses.

Bloch filed the present case in the district court asserting these claims and seeking assorted forms of declaratory, injunctive and monetary relief. The alleged causes of action were primarily grounded on 42 U.S.C. Section 1985. Named as defendants were the orphanage and forty-two individuals, including officals of the United States, Virginia, Ohio and Florida. Named as plaintiffs were Bloch and Johnny J. Dotson, a minor who was then residing with Bloch in Florida, but who had previously resided in the orphanage. Bloch was the only person to sign any of the plaintiffs' pleadings in the district court, but he asserted that he was Dotson's legal guardian and that he was signing on Dotson's behalf as well as for himself.

The district court ultimately dismissed the complaint and related pleadings on a number of grounds, and plaintiffs appeal. While they assign twenty-four grounds of reversible error, we perceive seven separate issues which merit discussion. We will treat them seriatim, setting forth additional facts where required. We affirm the judgment in part, and we reverse in part and remand for further proceedings.

I.

MANDAMUS

Bloch sought a writ of mandamus compelling federal officials to prosecute various defendants. The district court dismissed this portion of the case on the ground that mandamus will not lie to compel the performance of an act unless it is ministerial in nature, which the initiation of prosecution is not. *See* Record on Appeal at Tab 36, pages 3-4. The dismissal was correct. In any event, in a subsequent pleading, the plaintiffs explicitly abandoned this portion of the case. *See id.* at Tab 38, page 9A.

II.

THE FREEDOM OF INFORMATION ACT

Bloch sought an injunction under the Freedom of Information Act compelling federal officials to turn over certain records to him. The district court dismissed this portion of the case on the ground that "such a suit would be against the United States and should be filed in the jurisdiction in which the plaintiffs reside [*i.e.,* Florida] as set forth in 28 U.S.C. Section 1402." *Id.* at Tab 36, page 4. This reasoning was erroneous. The Freedom of Information Act itself provides that suit to enforce it may be brought "in the district in which the complainant resides, or has his principal place of business, *or in which the agency records are situated. . . .*" 5 U.S.C. Section 552(a) (4) (B) (1976) (emphasis added). The pleadings do not indicate where the agency records at issue are kept. They may well be kept in the Western District of Virginia, where the suit was filed. In a subsequent pleading, however, the plaintiffs also explicitly abandoned this portion of the case, *see* Record on Appeal at Tab 38, page 9, so that any error on the part of the district court was immaterial.

III.

HABEAS CORPUS

On May 29, 1975, in a state court located in the Western District of Virginia, Bloch was convicted on two counts of abduction. Bloch was charged with taking two wards of The Mountain Mission School to Florida without obtaining the orphanage's permission. As part of the present suit, Bloch sought a writ of habeas corpus over-

turning this conviction. The district court dismissed this portion of the case for failure to exhaust state remedies. Bloch subsequently abandoned this portion of the case, *see* Record on Appeal at Tab 38, page 11, so that we need not consider the propriety of the dismissal.

IV.

OHIO ORPHANS

The plaintiffs claim that Ohio welfare officials violated Ohio law by placing Ohio orphans in The Mountain Mission School, an unapproved institution. The district court rejected this claim on two grounds: (1) Ohio welfare officials have removed the Ohio orphans from The Mountain Mission School, thereby mooting the controversy; (2) More importantly, the plaintiffs never had standing to challenge the practice. We agree that plaintiffs lacked standing to raise this issue.

V.

UNCONSTITUTIONALITY

The plaintiffs maintain that Va. Code Section 63.1-218 (1980) is unconstitutional under the Equal Protection Clause of the Fourteenth Amendment. The statutory provision reads as follows:

> None of the provisions of this chapter [regulating orphanages and other child-care institutions] shall apply to any private school or charitable institution incorporated under the laws of this State, which is located west of Sandy Ridge and on the watersheds of Big Sandy River, and to which no contributions are made by the State or any agency thereof.

The Mountain Mission School may well be the only child-care institution thereby exempted from regulation. The district court never mentioned this claim, although it dismissed the entire case.

As a preliminary matter, we think that the plaintiffs have failed to join a proper defendant for this portion of the case. A suit challenging the constitutionality of this statutory provision should be brought against the state, the state agency that would regulate The Mountain Mission School but for the exemption, or the state official in charge of that agency. None of these are defendants in the present case.

In any event, we think that the statute is constitutional. We do not perceive that the distinction drawn by the Virginia legislature harms a discrete and insular minority or impinges on a fundamental interest. (Even if orphans are a discrete and insular minority, heightened scrutiny would not be appropriate because this statute draws a distinction between two different groups of orphans, rather than between orphans and non-orphans.) Therefore, the applicable test is the minimum rationality test. Only one time in the last half century has the Supreme Court struck down a statute under this test, *see* Morey v. Doud, 354 U.S. 457 (1957) (striking down a law that exempted the American Express Company by name from regulations imposed on sellers of money orders),[1] and recently that decision was explicitly

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1. The Burger Court ostensibly has applied this test on a number of occasions to strike down statutes, but these decisions are generally interpreted as implicit extensions of heightened scrutiny to new subjects (*e.g.*, gender-based distinctions). *See, e.g.*, G. Gunther, *Cases and Materials on Constitutional Law*, 663 nn. 13, 15 (9th ed. 1975).

overruled, *see* City of New Orleans v. Dukes, 427 U.S. 297, 306 (1976) (per curiam opinion representing the views of seven Justices) (upholding a grandfather clause that exempted two vendors from a ban on pushcarts in the French Quarter). In the majority of cases of this sort, the Court has not found it necessary to write an opinion, but instead has rejected the challenge summarily. *See* G. Gunther, *Cases and Materials on Constitutional Law*, 674 n.1 (9th ed. 1975). Moreover, we are unaware of any other case where a claim of this sort was brought by a "customer" of an unregulated entity, seeking an extension of the regulation. Rather, claims of this sort have been brought by regulated entities, and the remedy, if any, was thought to be invalidation of the regulation. We conclude that there is no merit to this portion of the plaintiff's case.

VI.

INJUNCTIVE AND COMPENSATORY RELIEF FOR OTHER INJURIES

Having decided the five more narrow portions of this case, we are left with an open-ended request for injunctive and compensatory relief for other injuries.

A. Jurisdiction

At the outset, it is appropriate to determine which of the many defendants are properly before us and which should be dismissed for lack of personal jurisdiction. The plaintiffs' abandonment of the mandamus and Freedom of Information Act portions of their case, earlier mentioned, took the form of an abandonment of all claims against defendants William Webster and Griffin Bell. That leaves forty-one defendants, including The Moun-

tain Mission School. These forty-one defendants may be divided into five groups for the purpose of determining if personal jurisdiction exists:

(1) *The Virginia Defendants* – The Mountain Mission School, sixteen of its officers, directors and employees, and eight other individuals (Williams, McGlothlin, Persin, Shields, J. Marshall Coleman, Sergent, Osborne, and Gibson) fall into this group.

(2) *Makely* – This defendant is a United States Magistrate in Ohio. There is no indication in the record that he was ever served. He has filed no pleadings in the case.

(3) *Sawyer* – This defendant is a private attorney in Florida. He filed an answer and a motion to dismiss but failed to allege a lack of personal jurisdiction.

(4) *Other Ohio and Florida Defendants* – Twelve individuals (Wainwright, Griscom, Paul Coleman, Schwertfager, Donna Gallion, Mullett, Beck, Asa Mellor, Wanda Mellor, Gary Oyler, Ruth Oyler, and Ottmar Gallion) fall into this group. They filed answers that explicitly alleged a lack of personal jurisdiction.

(5) *Pennsylvania Defendants* – Two individuals (Charles Lambert and Lynda Lambert) fall into this group. They filed a pro se "motion to dismiss" which failed to allege a lack of personal jurisdiction.

Unless an exception is provided by federal law or the law of the forum state, a federal court may exercise personal jurisdiction over a nonconsenting defendant only if he is served within the boundaries of the forum state. *See* Fed. R. Civ. P. 4(f). Federal law does not create any exceptions that are even conceivably applicable to the nonresident defendants in this case. *See generally* 4 C. Wright & A. Miller, *Federal Practice and Procedure* Sections 1118, 1125, at 523 n.3 (1969 & 1981 pocket part). Virginia state law creates only one exception that is even conceivably applicable to the nonresident defendants in this case: the subsection of the Virginia long-arm statute which covers a defendant "[c]ausing tortious injury in this State by an act or omission outside this State if he regularly does or solicits business, *or engages in any other persistent course of conduct,* or derives substantial revenue from goods used or consumed or services rendered, in this State," Va. Code Section 8.01-328.1 (A) (4) (1981 Cumm. Supp.) (emphasis added). It does not appear that a Virginia court has ever construed the emphasized language, but we do not think that it extends to any of the nonresident defendants in this case. *Cf. World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286 (1980) (holding that it was unconstitutional for Oklahoma to apply a similar long-arm statute to an East Coast auto distributor and an East Coast auto retailer, even though an East Coast customer drove his auto to Oklahoma; was involved in an accident there, and allegedly was injured as a result of a defect in the auto).

Of course, a federal court may exercise jurisdiction over a nonresident defendant who consents thereto by failing to allege a lack of personal jurisdiction in his answer or in his first motion, whichever comes first. *See* Fed. R. Civ. P. 12(h)(1). It is clear that Sawyer and the Pennsylvania defendants consented in this manner to the exercise

of personal jurisdiction over them. Makely's status is unclear. Some courts have held that a defendant who fails to respond to a complaint in a timely fashion does not thereby consent to the exercise of personal jurisdiction over him, *see* cases cited in 5 C. Wright & A. Miller, *Federal Practice and Procedure* Section 1391, at 857 n.44 (1969), but the better view is that, *if the defendant was served,* his failure to respond in a timely fashion constitutes consent, *see id.* Section 1391, at 857-58. Therefore, the question of whether the district court has personal jurisdiction over Makely depends on whether he was served, which is something that is not reflected in the present record.

We conclude that only the defendants in the fourth group should be dismissed for lack of personal jurisdiction at this time. On remand the district court should determine whether Makely was served.

B. The Merits.

The request for injunctive and compensatory relief is grounded upon 42 U.S.C. Section 1985. Section 1985 (1) prohibits conspiracies to prevent federal officials "by force, intimidation, or threat" from discharging their duties. The first half of Section 1985(2) prohibits conspiracies to prevent persons from attending or testifying in federal court. The second half of Section 1985(2) prohibits conspiracies to obstruct justice in state court "with intent to deny to any citizen the equal protection of the laws." Finally, Section 1985(3) prohibits conspiracies to deprive any person "of the equal protection of the laws, or of equal privileges and immunities under the laws."

The factual allegations in the complaint do *not* implicate Section 1981(1) and *do* implicate the second half of Section 1985(2) and Section 1985(3). As for the first half of Section 1985(2), the complaint accuses defendant Persin of threatening Bloch in order to prevent him from testifying in a civil suit, but fails to indicate in what court that civil suit was to have been filed. *See* Record in Appeal at Tab 1, page 2. The complaint also accuses assorted individuals of agreeing to dismiss a federal suit brought by Ohio Welfare officials against The Mountain Mission School in order to prevent orphans, presumably including plaintiff Dotson, from giving damaging testimony. *See id.* at Tab 1, page 3.[2] Also, an inference can reasonably be drawn from the complaint as a whole that one purpose of the illegal conduct in which the defendants allegedly engaged was generally to prevent the filing of a federal suit or the testimony of the plaintiffs therein.

Given that pro se pleadings must be read liberally, we think that the plaintiffs must be afforded the opportunity to develop a claim under both halves of Section 1985(2) and under Section 1985(3) on remand in the district court if the other prerequisites for a suit under these provisions are present.

The district court gave five reasons for dismissing some or all of this portion of the case as against some or all of the defendants:

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2. Admittedly, this allegation is improbable, since some of the same individuals filed the suit in the first place.

(1) Class-based animus was a prerequisite and was not present;[3]

(2) The statute of limitations had expired for Bloch's claims;[4]

(3) Defendant Persin enjoyed judicial immunity;

(4) The defendant Florida parole officials did nothing wrong because they had a right to supervise the conduct of parolee Bloch;

(5) The complaint did not even allege that the directors of The Mountain Mission School or sixteen other individual defendants did anything wrong.

We turn to these reasons.

While courts have disagreed on whether class-based animus is an essential element for a violation of the first half of Section 1985(2), *see* cases cited in Kimble v. D.J. McDuffy, Inc., 70 L.Ed.2d 651 (1981) (White, J., dissenting from a denial of certiorari), they agree that it is an essential element for a violation of the second half of Section 1985(2), *see, e.g.*, McCord v. Bailey, 636 F.2d 606 (D.C. Cir. 1980) (holding that it is not an essential element for a violation of the first half of Section 1985(2) but that it is an essential element for a violation of the second half of Section 1985(2)), *cert. denied*, 451 U.S. 983 (1981); Brawer v. Horowitz, 535 F.2d 830

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3. Originally, the district court also held that state action was a prerequisite and was not present for many of the defendants. In a motion for reconsideration, the plaintiffs pointed out that state action is not a prerequisite for a suit under Section 1985. The district court modified its order accordingly.

4. Originally, the district court also held that the statute of limitations had expired for Dotson's claims. In a motion for reconsideration, the plaintiffs pointed out that Dotson had been a minor until after the suit was filed, so that the limitations period had never started to run on his claims. The district court modified its order accordingly.

(3 Cir. 1976) (same), and the Supreme Court has held that it is an essential element for a violation of Section 1985(3), *see* Griffin v. Breckenridge, 403 U.S. 88 (1971). We find persuasive those decisions holding that class-based animus is *not* a prerequisite for a violation of the first half of Section 1985(2) but that it *is* a prerequisite for a violation of the second half of Section 1985(2). The "equality" language that is the foundation for the class-based animus requirement in Section 1985(3) is conspicuously absent from the first half of Section 1985(2) but is present in the second half of Section 1985(2).

The complaint clearly alleges that the conspiracy was motivated in part by animus against orphans, and we think that that is enough to invoke the portions of Section 1985 that require class-based animus. In *Griffin*, the Supreme Court dealt with a conspiracy motivated by racial bias--the core concern of Section 1985--but stated in a footnote: "We need not decide, given the facts of this case, whether a conspiracy motivated by invidiously discriminatory intent other than racial bias would be actionable under the portion of Section 1985(3) before us." 403 U.S. at 102 n.9. At that point, the *Griffin* court cited the remarks of Senator Edmunds, the Senate manager of the Ku Klux Klan Act of 1871, which enacted Section 1985. Senator Edmunds opined that the statute would cover Democrats, Catholics or Methodists. *See* Cong. Globe, 42d Cong., 1st Sess. 567 (1871). We have recently relied in part on those remarks in holding that Section 1985(3) covered a conspiracy motivated in part by animus against members of the Unification Church (*i.e.*, "Moonies"). *See* Ward v. Connor, 657 F.2d 45 (4 Cir. 1981), *cert. denied sub nom.* Mandelkorn v. Ward, 50 U.S.L.W. 3570 (Jan. 18, 1982).

Since *Griffin*, the Supreme Court has not faced the question of what classes are protected by the portions of Section 1985 that require class-based animus, and the decisions of the lower courts are impossible to reconcile, *see* cases cited in Scott v. Moore, 640 F.2d 708, 718-24 (5 Cir. 1981). We think, however, that orphans are far more analogous to members of racial minorities than are members of a political party, whom Senator Edmunds would have included, or members of other groups that have been included by the courts, *see, e.g.*, Scott v. Moore, *supra* (nonunion workers).

It is not enough, however, to conclude that Section 1985 was meant to cover the conspiracy alleged in this case. It must also be true that Congress had the power to prohibit such a conspiracy. *See* Griffin v. Breckenridge, *supra;* Ward v. Connor, *supra;* Bellamy v. Mason's Stores, Inc., 508 F.2d 504 (4 Cir. 1974). In *Griffin*, the Supreme Court held that Congress had the power to reach a private conspiracy motivated by racial bias against blacks under the Thirteenth Amendment, which is phrased as a positive command rather than as a limitation on government and thus involves no state action requirement. The Court also stated that Congress had the power to reach the conspiracy because one of its objects had been to interfere with the plaintiffs' right to travel, which is guaranteed--like the right to be free from slavery--by a positive (albeit implicit) command, rather than by a limitation on government. The Court explicitly declined to decide whether Congress had the power to reach private conspiracies under the Enforcement Clause of the Fourteenth Amendment, the other clauses of which limit only the states.

In *Bellamy*, we dealt with a private conspiracy motivated by animus toward the Ku Klux Klan (an ironic development given the origin of Section 1985).

Neither the Thirteenth Amendment nor the right to travel was implicated, and we avoided the question of congressional *power* by interpreting Section 1985 not to reach private conspiracies unless they implicated one of the sources of power relied on by the *Griffin* Court. Finally, in *Ward,* we held that Congress had the power to reach a private conspiracy to "deprogram" a "Moonie" because one object of the conspiracy had been to interefere with the plaintiff's right to travel. There, we said: "[T]he complaint specifically alleges that interference with the plaintiff's right to travel was one of the objects of the conspiracy and the fact that the conspiracy had other objectives is immaterial." 657 F.2d at 48. The complaint in the present case contains numerous allegations that interference with the plaintiffs' right to travel was one of the objects of the conspiracy, so *Ward* compels the conclusion that Congress had the *power* to reach the conspiracy alleged in this case.

Another possible problem arises at this point. Plaintiff Dotson is a member of the protected class, but plaintiff Bloch is not. By its terms, the portions of Section 1985 that require class-based animus do not require that the plaintiff be a member of the protected class, but only that the plaintiff be harmed as a result of a conspiracy motivated in part by animus toward a protected group. We think that the statute should be accorded its literal meaning. The Supreme Court has expressly adopted this broad rule of standing under a related statute, *see* Sullivan v. Little Hunting Park, Inc., 396 U.S. 229 (1969) (applying 42 U.S.C. Section 1982), and support for doing the same under the portions of Section 1985 that require class-based animus can be found in *Griffin* itself, see Novotny v. Great American Federal Savings and Loan Assoc., 584 F.2d 1235, 1245 (3 Cir. 1978), *rev'd on other grounds,* 442 U.S. 366 (1979) (expressing no

disagreement with the lower court's holding that the plaintiff had standing despite the fact that he was not a member of the protected class). In *Griffin,* the plaintiffs alleged that they were attacked because the conspirators mistakenly thought that one of the plaintiffs' traveling party–who did not join as a plaintiff–was a civil rights worker. The *Griffin* Court held that the plaintiffs had standing, even if the supposed civil rights worker had been the only target of the conspiracy, simply because they were injured as a result of the conspiracy. *See* 403 U.S. at 103. This holding is not directly applicable in the present case, because the plaintiffs in *Griffin* were members of the protected class, but the holding does seem to indicate that Bloch has standing. We therefore conclude that he does.

The district court ruled that Bloch's claims were barred by the statute of limitations. In a conspiracy case, the limitations period begins to run when the last act is committed in furtherance of the conspiracy. The plaintiffs have at least alleged that such an act occurred within a few months of the filing of the suit. *See* Record on Appeal at Tab 1, page 4. Upon further development of the facts, it may turn out that a dismissal of Bloch's claims under the statute of limitations would be appropriate, but we think that a dismissal on this ground at this stage was erroneous.

The district court ruled that defendant Persin enjoyed absolute judicial immunity from this suit. If the allegations against Persin, a state judge, are taken to be true--if he informed counsel for residents of The Mountain Mission School who wished to filed suit that, if Bloch testified in that proceeding, he would imprison Bloch--we think that this defendant acted in the clear absence of all jurisdiction, so that judical immunity would not apply.

See Stump v. Sparkman, 435 U.S. 349 (1978). We think the district court was in error in dismissing the claims against Persin on this ground.

Because the Florida welfare officials must be dismissed for lack of personal jurisdiction, we do not consider the correctness of the district court's ruling that the defendant Florida welfare officals did nothing wrong because they had a right to supervise the conduct of parolee Bloch.

Finally, it is true that the text of the complaint fails even to mention many of the named defendants. There are many serious allegations, however, in which the actor is not named. Since pro se complaints must be read liberally, we think that it was premature to dismiss defendants on this basis at this stage of the proceedings. A number of the defendants objected to the vagueness of the complaint and demanded strict proof. Instead of outright dismissal, the plaintiffs should be required to clarify their allegations. When this has been done, a number of summary dismissals may well be appropriate.

VII.

BLOCH'S LEGAL CAPACITY TO SUE FOR DOTSON

In the district court, The Mountain Mission School, all sixteen of its officers, directors and employees, Williams and Osborne asserted that Dotson's claims against them were not properly before the court because Dotson had signed none of the plaintiffs' pleadings. Dotson's failure to sign any of the plaintiffs' pleadings would preclude litigation of his claims against these defendants unless Bloch, who did sign all of the pleadings, was an attorney or otherwise had legal capacity to sue on Dotson's behalf. *See* Fed. R. Civ. P. 11, 17. Bloch

is not an attorney. Bloch alleges that he was appointed Dotson's legal guardian by a Florida court, but does not allege that he was appointed Dotson's legal guardian by any Virginia court. We think that we must look to Virginia law to determine whether Bloch has legal capacity to sue on Dotson's behalf in a district court located in Virginia. *See* 6 C. Wright & A. Miller, *Federal Practice and Procedure* Section 1571, at 780-81 (1971).

In Holt v. Middlebrook, 214 F.2d 187 (4 Cir. 1954), we applied Va. Code Section 26-59, which provides that no person not a resident of Virginia shall be appointed or allowed to qualify *or act* as a personal representative, or be appointed as a guardian, unless a resident is appointed as a personal representative or guardian, as the case may be. We held that this statute prohibited a nonresident personal representative from maintaining an action against Virginia residents in a district court located in Virginia unless a resident had also been appointed as a personal representative. However, we later held in Vroon v. Templin, 278 F.2d 345 (4 Cir. 1960), that this statute did not prohibit a nonresident guardian from maintaining an action against Virginia residents in a district court in Virginia. It was our view that the right of guardian to sue in a district court in Virginia was governed by the common law of Virginia. We left that question to the district court.

Unfortunately, there is no definitive Virginia decision indicating what the common law of Virginia is with respect to the right of a guardian not appointed by a Virginia court to sue on behalf of his alleged ward. In such circumstances we are obliged to make an informed prediction of how a Virginia court would decide the question if it were presented with it.

The majority rule at common law is that nonresident guardians may not bring suit out of the state of their appointment unless they obtain an ancillary appointment from the state in which they are suing. *See* 6 C. Wright & A. Miller, *supra,* Section 1565, at 754-56. Many states with the majority common-law rule have relaxed it by legislation permitting foreign fiduciaries to sue locally. *See id.* Virginia has such a statute but it is very limited in scope. Va. Code Section 26-60 permits a guardian who has been lawfully appointed in the state where a nonresident infant resides to sue in Virginia for authority to remove property or money in Virginia to which the infant is entitled to the jurisdiction of the infant's domicile. The statute, of course, does not apply here because the purpose of this suit is not to remove property or money to which Dotson is entitled from Virginia to another jurisdiction. But we think that the enactment of the statute was clear recognition on the part of the Virginia legislature that the majority common-law rule prevailed in Virginia and that it was necessary to modify it to some extent. Since the modification is inapplicable here, our conclusion is that the majority common-law rule prevails and Bloch is not permitted to sue on behalf of Dotson in Virginia because he was not appointed as guardian of Dotson by a Virginia court of competent jurisdiction. The entire complaint on behalf of Dotson against the defendants who challenged Bloch's legal capacity to sue on Dotson's behalf was properly dismissed for the reasons we have expressed.

VIII.

We summarize our conclusions. We affirm the district court's dismissal of: (1) the prayer for a writ of mandamus, (2) the request for relief under the Freedom of Information Act, (3) the application for a writ of

habeas corpus, (4) the challenge to the decision by Ohio welfare officials to place Ohio orphans in The Mountain Mission School, (5) the challenge to the constitutionality of the Virginia statute exempting The Mountain Mission School from regulation, (6) all claims against defendants William Webster and Griffin Bell, (7) all claims against all Ohio and Florida defendants other than Makely and Sawyer, and (8) all of Dotson's claims against The Mountain Mission School, its sixteen defendant officers, directors and employees, Williams and Osborne. In all other respects, we vacate the district court's judgment and remand the case for further proceedings consistent with this opinion.[5]

AFFIRMED IN PART;
VACATED IN PART
AND REMANDED.

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5. In addition to a lack of personal jurisdiction and Dotson's failure to sign any of the pleadings, other defenses to this suit were raised below but not addressed by the district court. On remand, the remaining defendants are of course free to press any such defenses which they raised in a timely fashion.

Va. Code Section 63.1-218. Chapter not to apply to certain schools and institutions. — None of the provisions of this chapter shall apply to any private school or charitable institution incorporated under the laws of this State, which is located west of Sandy Ridge and on the watersheds of Big Sandy river, and to which no contributions are made by the State or any agency thereof. (Code 1950, Section 63-255; 1968, c.578.)

Section 1985. Conspiracy to interfere with civil rights

Preventing officer from performing duties

(1) If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

Obstructing justice; intimidating party, witness, or juror

(2) If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any

grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

Depriving persons of rights or privileges

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen

of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

R.S. Section 1980.

Fed. R. Civ. P. 4. Process

. . . .

(e) SAME: SERVICE UPON PARTY NOT INHABITANT OF OR FOUND WITHIN STATE. Whenever a statute of the United States or an order of court thereunder provides for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the state in which the district court is held, service may be made under the circumstances and in the manner prescribed by the statute or order, or, if there is no provision therein prescribing the manner of service, in a manner stated in this rule. Whenever a statute or rule of court of the state in which the district court is held provides (1) for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the state, or (2) for service upon or notice to him to appear and respond or defend in an action by reason of the attachment or garnishment or similar seizure of his property located within the state, service may in either case be made under the circumstances and in the manner prescribed in the statute or rule.

(f) TERRITORIAL LIMITS OF EFFECTIVE SERVICE. All process other than a subpoena may be served anywhere within the territorial limits of the state

in which the district court is held, and, when authorized by a statute of the United States or by these rules, beyond the territorial limits of that state. In addition, persons who are brought in as parties pursuant to Rule 14, or as additional parties to a pending action or a counter-claim or cross-claim therein pursuant to Rule 19, may be served in the manner stated in paragraphs (1)-(6) of subdivision (d) of this rule at all places outside the state but within the United States that are not more than 100 miles from the place in which the action is commenced, or to which it is assigned or transferred for trial; and persons required to respond to an order of commitment for civil contempt may be served at the same places. A subpoena may be served within the territorial limits provided in Rule 45.